

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN
3 -----

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. CR 11-193
7) Milwaukee, Wisconsin
8 vs.)
9) November 29, 2011
10 TYRONE McMILLIAN, a/k/a "HK,") 1:30 p.m.
11)
12 Defendant.)
13 -----

14 **TRANSCRIPT OF EVIDENTIARY HEARING**
15 BEFORE THE HONORABLE NANCY JOSEPH
16 UNITED STATES MAGISTRATE JUDGE

17 APPEARANCES:

18 For the Plaintiff
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Proceedings recorded by computerized stenography,
transcript produced by computer aided transcription.



1 P R O C E E D I N G S (2:34 p.m.)

2 THE COURT: Good afternoon, please be seated. Clerk
3 the court calls United States of America vs. McMillian, Case No.
4 11-CR-193. May I have the appearances, please?

5 MR. WALL: Joseph Wall for the United States. Good
6 afternoon, Your Honor.

7 THE COURT: Good afternoon, Mr. Wall.

8 MR. BOYLE: Good afternoon, Your Honor. Bridget
9 appears on behalf of Mr. McMillian, who is present.

10 THE COURT: Good afternoon, Ms. Boyle, and good
11 afternoon to you, Mr. McMillian. We are here this afternoon for
12 an evidentiary on a motion filed by the defendant.

13 Before we begin talking housekeeping, I'd like to
14 sequester any witnesses that are in the courtroom. There's an
15 officer in the back of the courtroom, is he anticipated to be a
16 witness?

17 MR. WALL: He's the first witness, Your Honor.

18 THE COURT: I would ask that he please step out.

19 The housekeeping matter that I want to take up before
20 we call your first witness here, is I received the pleading
21 entitled, "Evidentiary Hearing Memorandum" filed yesterday. I
22 wanted to check with the defendant, Ms. Boyle, is that your
23 understanding of what the issues are in this hearing?

24 MR. BOYLE: Yes, it is.

25 THE COURT: As to Section C-1, validity of the state's

1 search warrant, I want to make sure I understand the question.
2 The way I understand the question is that assuming the entry to
3 the bedroom was unlawful, whether the remaining paragraphs would
4 still support probable cause. Is that correct, Mr. Wall?

5 MR. WALL: That would be paragraphs 1 through 5 which
6 are the homicide probable cause paragraphs.

7 THE COURT: Ms. Boyle, do you agree with that summary
8 of the question?

9 MR. BOYLE: It would be paragraphs 1 through 5? I
10 will -- yes. If -- can you restate it? I'm sorry.

11 THE COURT: Sure. If we excise all the information
12 regarding what was observed in the bedroom, whether the
13 remaining paragraphs would support probable cause. That would
14 be the question.

15 MR. BOYLE: Correct.

16 THE COURT: If it is found to be unlawful.

17 MR. BOYLE: That is a correct statement.

18 THE COURT: Okay. With that, are we ready to proceed?

19 MR. WALL: We are, Your Honor.

20 THE COURT: Mr. Wall, you may call your first witness.

21 THE CLERK: Please raise your right hand.

22 BRIAN SHULL, GOVERNMENT WITNESS, DULY SWORN

23 THE CLERK: Please be seated. Please state your full
24 name and spell your last name for the record.

25 THE WITNESS: Brian Shull. B R I A N, S H U L L.

DIRECT EXAMINATION

BY MR. WALL:

Q. Good afternoon, Mr. Shull. Where do you work?

A. City of Milwaukee Police Department.

Q. And how long have you been with the City of Milwaukee Police Department?

A. Approximately 15-1/2 years.

Q. And what's your general assignment at this time?

A. My assignment at this time is I work with Neighborhood Task Force. I'm on a Fugitive Apprehension Unit.

Q. How about this summer, let's say July?

A. Same assignment.

Q. Direct your attention to July 6th, 2011, this summer. Were you on duty that day?

A. Yes.

Q. And move ahead a little bit. Did you have an opportunity to look at some suspect cards earlier that day?

A. Yes.

Q. And did one in particular create an interest in you?

A. Yes.

Q. And for whom was that?

A. Tyrone McMillian.

Q. And what was the suspect card for?

A. It was for a homicide.

Q. Double homicide or homicide?

1 A. It's for a double homicide.

2 Q. Briefly, what is a suspect card, for the court?

3 A. A suspect card is just that. It's probable cause for an
4 arrest. Your suspect, whether you've been identified by a
5 coactor, somebody identified you by a photo array, you left
6 fingerprints, you left DNA, wasn't reviewed by district attorney
7 yet, or could have been reviewed by a district attorney and they
8 would like an arrest to be made and see if a statement would be
9 given and then they would make a final decision on what would
10 happen in that incident.

11 Q. And have you used suspect cards all 15 years of your
12 employment at MPD?

13 A. I haven't used them in all 15 years, but they have been
14 around since I've been employed, yes.

15 Q. Regarding the homicide suspect card for Tyrone McMillian,
16 after reviewing that what did you decide to do?

17 A. I did what I call is a workup or a background on him. That
18 consists of doing everything that I have access to, Internet,
19 departmental records, reports, anything with Tyrone McMillian's
20 name on it, vehicles associated to him, addresses, family
21 members, aunts, uncles, brothers, sisters, dads, moms, places of
22 employment. Things like that.

23 Q. Okay. Did that information ultimately lead you to the
24 address of 6333 West Darnell Avenue in Milwaukee/Brown Deer?

25 Brown Deer.

1 A. Brown Deer, yes.

2 Q. And approximately when did you get to that address?

3 A. About 1:00 o'clock p.m.

4 Q. And what did you observe?

5 A. We drove by the address. I observed a red Lexus which
6 through my investigation listed back to an Ashley Knueppel, who
7 gives that address as a home address. I saw a maroon Bentley
8 with no plates parked in front of that which through my
9 investigation was owned by Mr. McMillian and driven by
10 Mr. McMillian. And to the right of that was a black Mercedes
11 Benz which I had no clue whose that was.

12 Q. Okay. Knueppel is K N U E P P E L.

13 After seeing these vehicles did you observe any
14 individuals in or outside that residence?

15 A. Not at the time that we passed. However, we did sit down
16 the block waiting for more cars to come because we were going to
17 knock on the house. During that waiting process we did see the
18 red Lexus leave the residence and then come back to the
19 residence.

20 Q. Did you see whether a male or female was driving that?

21 A. No.

22 Q. After that red Lexus returned to the Darnell Street
23 residence, what did you do?

24 A. We still waited for our backup. Once all our officers that
25 we had requested arrived on scene, we cultivated a plan on what

1 we were going to do and we executed that plan.

2 Q. And who arrived on scene?

3 A. Couple Brown Deer officers were there. I don't have their
4 squads or names. They were basically traffic control. Also
5 members of our tactical enforcement unit arrived. I don't
6 recall everybody's name without reviewing reports, but around
7 six to seven officers, including two sergeants -- my sergeant,
8 Sergeant Rick Burmeister, B U R M E I S T E R, and their
9 sergeant. And my partner was with me as well, Police Officer
10 Kenneth Walkowiak, W A L K O W I A K.

11 Q. And what does the tac squad do? What's their duties?

12 A. Tactical enforcement unit, their duties are -- it ranges
13 from barricaded subjects, to high felony arrests, to clearing
14 houses, making -- if it's considered to be a dangerous arrest
15 they would be the ones to go in and execute it.

16 Q. Was this considered to be a high felony arrest or a
17 dangerous arrest?

18 A. For a double homicide? Yes.

19 Q. What happens next? The tactical squad is there, you and
20 your fellow officers are there.

21 A. We're there. The house is pretty much surrounded. I don't
22 know who is where, but I'm behind the side door. I knock on the
23 side door, I announce myself, "Milwaukee police, Ashley, come to
24 the door."

25 Q. And how did you know to ask for Ashley?

1 A. I'm assuming it's her. It was her car that left. She
2 claims she lives there so I'm taking a guess that it's her.

3 Q. What happens after you knock on the door and ask for Ashley?

4 A. A female does come to the door. I basically ask if she was
5 Ashley, she stated, "Yes." I confirmed it more by saying,
6 "Ashley Kneuppel?" She said, "Yes." I asked if she lived
7 there, she said, "Yes." I asked if there's anybody else in the
8 home with you, she said, "Yes, my boyfriend Tyrone." I
9 reconfirmed that saying, "Tyrone McMillian?" She said, "Yes."

10 At that point I advise all the squads around the
11 house, and wherever else they're at, that our suspect is inside
12 the residence.

13 Q. And what did you tell Ashley to do at that point?

14 A. I asked Ashley to step outside, which she did. At that
15 point I yelled out, "Tyrone, Milwaukee Police Department, come
16 to the door." There was no response. I did this about two to
17 three times. On the third time he finally came to the door.

18 Q. And where were you standing when you were yelling into the
19 house for Tyrone McMillian?

20 A. At the side door.

21 Q. Were you inside the house yet?

22 A. No.

23 Q. Still outside.

24 A. Yes.

25 Q. Door was open?

1 A. Yes.

2 Q. Okay. Mr. McMillian comes to the door?

3 A. Yes.

4 Q. Does he identify himself?

5 A. I don't think he does. But with me looking at him, I viewed
6 his booking photos prior to all this, I knew it was him. So I
7 don't -- I don't remember -- I didn't ask him if he was -- I
8 knew he was Tyrone so I didn't ask him if he was Tyrone and he
9 didn't say he was Tyrone.

10 Q. Do you see in court today the individual who came to the
11 door when you yelled for Tyrone McMillian?

12 A. Yes.

13 MR. BOYLE: I'll stipulate that Tyrone McMillian is
14 seated next to me.

15 BY MR. WALL:

16 Q. Okay. He comes to the door, what do you do?

17 A. I tell him to turn around, place his hands behind his back.
18 Which he does. He was handcuffed and he was walked back,
19 backwards.

20 Q. Okay. And where are you at the time you put the handcuffs
21 on him?

22 A. Still by the side door. I don't remember if I took one step
23 in but I was at the side door. He was placed into custody.

24 Q. Where was Mr. McMillian at the time that you put the
25 handcuffs on him?

1 A. He was inside the threshold, the frame of the door.

2 Q. Within reaching distance?

3 A. Yes.

4 Q. Okay. You -- he's in custody, do you hand him off to any
5 other officers?

6 A. I hand him off to my partner, Police Officer Walkowiak.

7 Q. Before you did that did you notice whether he had shoes on
8 or was barefoot?

9 A. I noticed he had no shoes on.

10 Q. And did you make a comment about that to him?

11 A. Yes, I asked him if he wanted any shoes.

12 Q. And what did he say?

13 A. He said, he requested he would like his black Air Jordan
14 Nike flip flops.

15 Q. And at that time did he go with your partner Ken -- sorry.

16 A. He did. Before that I did notice a pair of black and white
17 Air Jordan Nike flip flops at the door and I asked him were
18 these them right here, he said, "No, those are hers, mine are in
19 the back bedroom."

20 Q. So he was still standing right by the doorway.

21 A. Yes.

22 Q. And you were able to show him the Air Jordans that were --

23 A. Yes.

24 Q. -- there. Okay. After he said that "mine are in the back
25 bedroom," what did you do?

1 A. At that time our tactical officers were conducting a
2 protective sweep for any other confederates or people inside the
3 house that didn't produce themselves outside the house.

4 Q. Okay. Approximately how many officers were involved in that
5 sweep? Approximately.

6 A. I believe four to five, because two of the officers were
7 still on the outside corners of the house.

8 Q. When they finished their protective sweep did anybody make
9 any statements to you about what was found in the house?

10 A. Somebody did. I don't recall who. But they did advise me
11 that the house was clear, but also that in one bedroom there was
12 a long black rifle case.

13 Q. Okay. So going back now, Tyrone McMillian says that "those
14 are hers." When he said "those are hers," who did you take him
15 to be referring to?

16 A. The only female that was there, Ashley.

17 Q. Okay. He says, "Mine are in the back bedroom." Do you have
18 any follow-up conversation with Ashley regarding the flip flops?

19 A. The only conversation I had with her is I asked her if she
20 knew where they were at. She said, "Yes." I said, "Let's go
21 get them." And we went to go get them.

22 Q. And where did she take you?

23 A. She took me to the -- I believe that would be the -- I'm not
24 sure of the direction, but it's -- it's the bedroom opposite of
25 where the black rifle case was.

1 Q. And how do you know it was the bedroom opposite the black
2 rifle case?

3 A. Because upon entering the bedroom I could see the black
4 rifle case to my right in the other room, where it was at.

5 Q. Now, at this time did you have any intent to search the
6 house at all?

7 A. No.

8 Q. Did you search any area of the house, at this time?

9 A. At this time, no.

10 Q. When she was directing you to this bedroom where the Air
11 Jordan flip flops were, did you have any intent to search that
12 bedroom?

13 A. No.

14 Q. Okay. So you go -- she leads you into the bedroom.

15 A. Yes.

16 Q. And, I show you a couple exhibits here. The court has them
17 and defense counsel has them. Exhibit Number 1, is that
18 familiar?

19 A. Yes.

20 Q. Okay. And what is that?

21 A. That's the -- would be the bedroom to my right. As you're
22 entering into the bedroom it would have been to my left. And
23 that's a picture of the long black rifle case, gun case.

24 Q. Was it in that position when you saw it or was it halfway
25 under the bed?

1 A. No, it was -- it was -- I would say it was more than halfway
2 under the bed. You can see the handle part sticking out.

3 Q. Other than that is that -- other than the gun case being
4 more under the bed, is that an accurate photo of that scene at
5 that time?

6 A. Yes.

7 MR. WALL: Judge, with that condition and caveat I
8 would move that into evidence.

9 MR. BOYLE: No objection.

10 THE COURT: Received.

11 (Exhibit 1 offered and received.)

12 BY MR. WALL:

13 Q. Okay. So you and Ashley go into the bedroom that she led
14 you to, correct?

15 A. Yes.

16 Q. And what do you do?

17 A. She went to the left, I went to the right, to the foot of
18 the bed. When I went to the right of the bed I saw a pair of
19 pants and I saw the black and white Nike Air flops sitting on
20 the floor. I bent down to pick them up, saying, "Are these
21 them?"

22 As I did, I then further observed two cases in-between
23 the bed and nightstand, one was blue, one was gray. The top
24 one, which I believe was the gray one, I can make out "HK Arms."
25 The other one, I couldn't make out if it was a gun case or not.

1 Q. Okay. Have you seen handgun cases before?

2 A. Yes.

3 Q. More than a thousand?

4 A. Not that many.

5 Q. More than 500?

6 A. Realistic number, I would say 200.

7 Q. These look like gun cases to you?

8 A. Yes.

9 Q. Did the HK Arms tell you it was a gun case?

10 A. That told me it was a gun case, yes.

11 Q. Did you move these gun cases in any way?

12 A. No.

13 Q. Did you touch either one of them?

14 A. At that time, no.

15 Q. I show you Exhibits 2 and 3. And again, there's a caveat on
16 these too. Exhibit 2 first. What does Exhibit 2 show?

17 A. That's the right side of the bed which is -- the bedroom
18 which is opposite of this bedroom.

19 Q. Exhibit 1.

20 A. Yes. Where the -- on Exhibit 2, on the floor where it's now
21 bare carpet were a pair of jeans and the Nike flip flops. I
22 don't remember exactly if the jeans were on top, to the left, to
23 the right, they were all together.

24 Q. Okay. Do you recall enough where the jeans and the flip
25 flops were to draw a red circle?

1 A. Yes.

2 Q. Okay. Why don't you do that on Exhibit 2. Just drew a red
3 circle where the jeans and the flip flops were.

4 (Witness complies.)

5 BY MR. WALL:

6 Q. Why don't you put a number 1 in that circle.

7 (Witness complies.)

8 BY MR. WALL:

9 Q. Okay. And now we see the bed, or at least looks like the
10 right side of the bed. And is that the nightstand that you
11 referred to earlier?

12 A. Yes.

13 Q. And the two gun cases that you just talked about, where were
14 those?

15 A. Two gun cases were in-between the headboard and the
16 nightstand, sitting vertical on each other's base.

17 Q. You're indicating with your hands that they were stacked
18 vertically one on top of the other.

19 A. Yes. With I believe it was the blue on the bottom and the
20 gray on the top.

21 Q. Okay. I think that's good enough.

22 Okay. Exhibit Number 2, is that -- let me put it this
23 way. This scene was disturbed after you first viewed it; would
24 that be correct? Or is this how the scene looked when you
25 walked in that bedroom the first time?

1 A. No. This looks after the search warrant.

2 Q. Disturbed.

3 A. Yes.

4 Q. Other than that, with pillow on the ground, the drawers
5 being open on the nightstand, is that essentially an accurate
6 photo of the bed, the nightstand, the drapes, the wall, the area
7 between the wall and the bed?

8 A. Yes.

9 MR. WALL: Your Honor, I move into evidence Exhibit 2,
10 with that caveat.

11 MR. BOYLE: I have no objection.

12 THE COURT: Received.

13 (Exhibit 2 offered and received.)

14 MR. WALL: I'll show the copy to Ms. Boyle first.
15 Give the officer's copy to the court.

16 MR. BOYLE: Fine.

17 BY MR. WALL:

18 Q. Okay. Exhibit Number 3. Again, photograph of pretty much
19 the same area in Exhibit 2, correct?

20 A. Yes.

21 Q. And again, this is not how you saw the bedroom the first
22 time you went into it, correct?

23 A. No, this is after.

24 Q. Okay. After the --

25 A. Search.

1 Q. After your fellow officers did the search warrant.

2 A. Yes.

3 Q. Okay. On the bed there there is a gray container and a blue
4 container. See that?

5 A. Yes.

6 Q. Are those the two gun cases that you saw between the
7 headboard and that nightstand there?

8 A. Yes.

9 Q. And again, other than the fact that the jeans are on the bed
10 and the drawers are removed and the gun cases have been moved,
11 is that otherwise an accurate depiction of that scene?

12 A. Yes. The only thing that was on the bed that I remember
13 when I first came in there was -- I think that's a laptop. But
14 there's a laptop.

15 Q. You're pointing to this pink object on the left margin
16 there.

17 A. Yes.

18 Q. Middle way up the photo. Okay.

19 Your Honor, I move into evidence Exhibit Number 3.

20 MR. BOYLE: No objection.

21 THE COURT: Received.

22 (Exhibit 3 offered and received.)

23 BY MR. WALL:

24 Q. Okay. Now, after you grabbed the flip flops and verify with
25 Ashley that those are the ones that Mr. McMillian was looking

1 for, what do you do?

2 A. We both walked out of the room. I passed the flip flops off
3 to somebody, I'm not sure who, but he wound up getting in
4 possession of his flip flops.

5 Q. Okay. Now, you accompanied Ashley to this back bedroom,
6 correct?

7 A. Yes.

8 Q. Did she at any time ever object or say I'll go get these, or
9 I will get the flip flops, or anything like that?

10 A. No.

11 Q. Under your policy would you have let her back into the house
12 alone to retrieve the flip flops?

13 A. No.

14 Q. Why not?

15 A. With the knowledge of at least one gun inside the residence,
16 but then with the additional knowledge of a possibility of
17 having two additional guns inside a residence, not knowing if
18 they're in cases, not knowing where they're at, period, bad idea
19 to let her wander around the house.

20 Q. We gotta take a step back.

21 A. Sure.

22 Q. I'm saying before you went into the bedroom with her,
23 following her.

24 A. Oh, no. Not with the knowledge of one -- at least one gun
25 being somewhere in the house, no.

1 Q. Did the fact that it was a double homicide investigation
2 have an impact on the decision that you would not let somebody
3 wander around that house?

4 A. That added to it. But that along with the fact that there
5 is a possible gun that's in the house. You just do not let
6 people walk around the house when you know there's a firearm
7 within the house.

8 Q. Standard operating procedure?

9 A. Yes. I would like to go home at night.

10 Q. Officer safety, right?

11 A. Yes.

12 Q. Common sense?

13 A. Yes.

14 Q. Okay. At some point did the squad car leave with
15 Mr. McMillian?

16 A. Yes.

17 Q. Okay. Did there come a point in time when you had a
18 conversation with one of your fellow officers about
19 Mr. McMillian having the status of a felon?

20 A. We did. And that was through Brown Deer. Brown Deer --
21 somebody from Brown Deer had mentioned that he was a felon. But
22 when I looked him up in CCAP, it always showed an open case out
23 of Walworth County, open felony case.

24 I then called into our clerk to run a SNEW on him,
25 basically to get his FBI number ran. At that point we found out

1 that he was a felon in Minnesota but his first name was spelled
2 Tyron, without an E. So when I did that in Wisconsin, that's
3 when felony cases came up in Wisconsin so I knew that he was a
4 felon here as well.

5 Q. Again, stepping back a little bit, your conversation with
6 Tyrone McMillian when he said, you know, I want my Air Jordan
7 flip flops, and he indicated that the ones in the doorway were
8 not his, did he give you any type of indication that you could
9 not retrieve them for him?

10 A. No.

11 Q. Did you have the understanding that he was requesting that
12 you retrieve them?

13 MR. BOYLE: I'm going to object to the form of the
14 question as being leading. And calls for speculation.

15 MR. WALL: Well, it goes to his state of mind.

16 THE COURT: The objection is sustained. Perhaps the
17 question can be rephrased.

18 BY MR. WALL:

19 Q. After your conversation with Tyrone McMillian about him
20 wanting his Air Jordan flip flops, did you form an opinion as to
21 what you should do regarding that, him saying that he wanted his
22 flip flops.

23 A. That I should get his flip flops for him.

24 Q. That's what was in your head.

25 A. Yes.

1 MR. WALL: Okay. I have no further questions.

2 THE COURT: Ms. Boyle?

3 MR. BOYLE: Thank you.

4 CROSS-EXAMINATION

5 BY MR. BOYLE:

6 Q. Okay. Officer, just so I understand this, at some point in
7 time on the morning of July 6, you learn that there's a suspect
8 card for a double homicide for Mr. McMillian, correct?

9 A. Yes.

10 Q. And as a result of that you went and did some background
11 information regarding Mr. McMillian.

12 A. Yes.

13 Q. You have indicated here today that it came to your attention
14 that there was a felony out of another state that you came to
15 learn about eventually, correct?

16 A. Yes.

17 Q. All right. You knew, though, prior to going to that
18 residence that he had an open Walworth County felony matter?

19 A. Yes.

20 Q. What other information did you learn regarding his
21 background prior to going to the residence? In regard --
22 specifically in regard to criminal history.

23 A. Criminal history? I know that he was convicted of -- I
24 believe it was robbery. I would have to look it up just to --
25 look it up and see what it's listed. I just remember it was a

1 robbery charge.

2 Q. And you knew a robbery was a felony.

3 A. Yes.

4 Q. And so you knew prior to going to 6333 West Darnell, that he
5 was a convicted felon, correct?

6 A. No. At that time, no.

7 Q. You didn't know, prior to going to the residence, that he
8 was a convicted felon?

9 A. No. Not the way I ran him the first time, no.

10 Q. All right. When you ran him what are you talking about?
11 Are you talking about just looking at CCAP?

12 A. Just looking at CCAP.

13 Q. Just looking at CCAP. So when you do a background record
14 check, as a fugitive task force member, you just looked him up
15 on CCAP, correct?

16 A. That's not all I did but, yes, that's part of what I do.

17 Q. And you knew he had an FBI number, though, prior to going to
18 that residence.

19 A. Yes, because he's had an open case so I assume -- it was an
20 open felony case so he was arrested, so he should have a FBI
21 number, yes.

22 Q. And, so you knew he had an FBI number prior to going to the
23 residence, correct?

24 A. Yes.

25 Q. And you're aware based on your knowledge and experience with

1 the police department that people are given FBI numbers when
2 they're convicted also of felonies, correct?

3 A. Yes.

4 Q. So as you're going to that residence, did you have a belief
5 as to whether or not you were dealing with a felon?

6 A. At that time, no.

7 Q. And you did not -- you do have computer systems and data
8 bases within the Milwaukee Police Department to run a person's
9 FBI number, correct?

10 A. Yes.

11 Q. And, as you sit here today, you're telling us that you did
12 not run the FBI number of Tyrone McMillian to get a proper --

13 MR. WALL: Objection, asked and answered.

14 MR. BOYLE: I'm not done.

15 THE COURT: Let her ask the question first.

16 BY MR. BOYLE:

17 Q. So you're telling us that you did not use one of those
18 computer systems to run the FBI number of Tyrone McMillian prior
19 to going to that residence to get a full idea of his prior
20 record.

21 A. No.

22 Q. So when you went to the residence you contacted Brown Deer
23 Police Department to let them know you needed some traffic help,
24 right?

25 A. Yes.

1 Q. You then also asked for backup assistance from a number of
2 tactical members in the Milwaukee Police Department, yes?

3 A. Yes.

4 Q. And you knew that this was a high-risk felony arrest.
5 Correct?

6 A. Yes.

7 Q. One more question about the FBI number. Is it you only get
8 an FBI number upon conviction of a felony offense or do you get
9 it upon arrest of a felony offense, based upon your knowledge?

10 MR. WALL: Objection, relevance.

11 THE COURT: Ms. Boyle, the relevance?

12 MR. BOYLE: Well, the relevance is because I think you
13 only get it upon conviction. And if he had an FBI number, that
14 means that this officer should have been aware that he had a
15 felony conviction prior to going there.

16 MR. WALL: He said he didn't run it. Twice.

17 MR. BOYLE: But I'm not asking him again about that.
18 I'm just asking him what you get it.

19 THE COURT: Officer Shull, do you know?

20 THE WITNESS: I don't know, truthfully, no.

21 BY MR. BOYLE:

22 Q. Okay. So you go to the residence and you are the person
23 that goes up to the door and knocks on it, right?

24 A. Yes.

25 Q. When you go up there what happens is Ashley Kneuppel comes

1 to the door, right?

2 A. Yes.

3 Q. Does she get taken outside of the doorway by any officers?

4 Or do you ask her to come out? What happens?

5 A. I asked her to come out.

6 Q. And did she come out?

7 A. She came out, yes.

8 Q. And where did she go?

9 A. Wherever -- behind us. I don't know. More than 10 feet
10 away from the door.

11 Q. She was not handcuffed or anything like that, correct?

12 A. No.

13 Q. You then call for Mr. McMillian to come to the door and
14 after two to three times she shows up in the doorway?

15 A. Yes.

16 Q. And you handcuff him.

17 A. Yes.

18 Q. And at that point in time Ashley is someplace else out of
19 the area, right?

20 A. She's still there. She didn't leave anywhere.

21 Q. Sure. But she's about 10 feet away from you guys?

22 A. Yeah.

23 Q. And it is at this point in time when you noticed that
24 Mr. McMillian doesn't have shoes on, correct?

25 A. I believe after handcuffing him and walking him backwards

1 out of the house, that's when I noticed he didn't have shoes on.

2 Q. And you noticed that and so now he's now away from the
3 threshold of the door, correct?

4 A. In front of the door, yes.

5 Q. About how far away from the threshold, you know, the side
6 door?

7 A. Not far. Within a foot, two feet.

8 Q. And at that point in time are you the one that has taken, I
9 guess, control of Mr. McMillian?

10 A. I have control of him.

11 Q. And are there any other officers around him or is it mainly
12 you?

13 A. No, there's members of the tac squad, tactical enforcement
14 unit. My partner, I don't know where, which side he's on, but
15 he's also there.

16 Q. So how many officers do you think, including yourself, were
17 around Mr. McMillian at this time?

18 A. No more than three.

19 Q. And the other officers have already gained entrance into the
20 residence to go and do the protective sweep? Or not?

21 A. I believe after I backed him up, noticed the shoes, that's
22 when the protective sweep was conducted.

23 Q. And at the point in time that you backed him up and the
24 protective sweep begins, you have a conversation with him about
25 where he should get some shoes from; is that what you're telling

1 us?

2 A. No. I basically said, "Do you want some shoes?"

3 Q. And he said, "Yes,--"

4 A. Yes.

5 Q. "--I want my Air Jordan flip flops"?

6 A. Yes.

7 Q. And the protective sweep is going on at this point in time,
8 correct?

9 A. Yes.

10 Q. And do you go in the house to look for the flip flops at
11 this point in time?

12 A. No.

13 Q. What do you do after he says I want my Air Jordan flip
14 flops?

15 A. I just stand there and wait for the protective sweep to be
16 done.

17 Q. Okay. And where is Ms. Kneuppel at this point in time; do
18 you know?

19 A. She's still there.

20 Q. So within about 10 feet away?

21 A. Yes.

22 Q. And the protective sweep finishes up, correct?

23 A. Yes.

24 Q. And do you say any more about the flip flops to
25 Mr. McMillian?

1 A. Just to -- when I noticed him by the door, I said, "Are
2 these them right there?" and him saying, "No, those are not
3 mine, those are hers; mine are in the back bedroom."

4 Q. All right. That takes place when? While you're standing
5 there while the protective sweep is going on or at another point
6 in time?

7 A. I would say simultaneously when the protective sweep's
8 being conducted.

9 Q. And after this conversation takes place and the protective
10 sweep ends, that's where eventually you go in the house. Am I
11 correct with that statement?

12 A. Yes. After everything was done, yes.

13 Q. So give me an idea of just -- I don't know how long a
14 protective sweep lasts, but from the time that you put the
15 handcuffs on Mr. McMillian to the time that you re-entered the
16 residence with Ashley to get the flip flops, what timeframe are
17 we talking about? Minutes? 15, 20? Seconds? I don't know how
18 long it takes.

19 A. I'm gonna say at least 10 minutes.

20 Q. So, a conversation takes place almost immediately after
21 handcuffs are on Mr. McMillian about the flip flops and about 10
22 minutes goes by and that's when you go back -- you go into the
23 residence with Ms. Kneuppel, correct?

24 A. Roughly, yeah, give or take a couple minutes. Yep.

25 Q. Now, where -- when you go back into the residence with

1 Ms. Kneuppel -- and I shouldn't say back into the residence
2 because you weren't in the residence at all until you walked in
3 with Ms. Kneuppel, correct?

4 A. Correct.

5 Q. All right. So, when you go in the residence and you walk in
6 there with Ms. Kneuppel, where is Mr. McMillian at this point in
7 time? Had he been taken to the squad?

8 A. He was placed into a squad.

9 Q. And give me an idea, if you can, when that took place? Was
10 that, again, while the protective sweep was going on, or after
11 it was done? Do you have an idea?

12 A. I don't recall if it was after the protective sweep was
13 done. I recall that an officer had to go and get a car and
14 bring it up. Because we had parked our cars like seven, eight
15 houses down the block.

16 Q. Okay.

17 A. So I don't know the exact timeframe of when he was placed
18 into a squad. It could have been as soon as the sweep was done,
19 it could have been a couple minutes after that. I'm not
20 positive on that.

21 Q. Your best recollection of the words that Mr. McMillian used
22 in regards to going to the back bedroom to get his flip flops
23 were what, "Mine are in the back bedroom"?

24 A. Those, when -- the exact words that I remember: "Those are
25 not mine, those are hers; mine are in the back bedroom."

1 Q. All right. He never said to you, "Go in and get them for
2 me"? He never said that to you.

3 A. No.

4 Q. He never said, "I'm giving you consent to go in and get my
5 flip flops in the back bedroom," did he?

6 A. No.

7 Q. You never asked him for consent to go into his residence,
8 did you?

9 A. No.

10 Q. Now, you eventually approach McMillian, let's say, 10
11 minutes after the placing of handcuffs of Mr. McMillian about
12 the flip flops; is that right?

13 A. Yes.

14 Q. Now, when you went up to her, what did you say to her as far
15 as you can best recall?

16 A. The only thing that I can remember saying is, "He needs his
17 flip flops, do you know where they are?"

18 Q. And her response to you was what?

19 A. I don't recall the exact words. I'm assuming it was
20 something to the effect of, "Yes, okay," because we wound up
21 walking toward the back to go get them.

22 Q. All right. Now, you say, "I'm assuming it was 'yes' or
23 'okay,'" you have absolutely no recollection of the words that
24 were used, correct?

25 A. Not word for word, no.

1 Q. And she never -- well, strike that.

2 Was there an officer standing there with her at that
3 point in time?

4 A. There are officers standing everywhere still.

5 Q. Now, you would agree that the fact that an individual such
6 as Tyrone McMillian being arrested, and you have another person
7 that was in the residence -- Ashley Kneuppel -- being outside,
8 that it would be good policy to have somebody standing with her
9 so that she doesn't cause any harm to any of the officers. You
10 would agree with that.

11 A. Correct.

12 Q. So -- and also at this point in time while this protective
13 sweep is going on, you have no idea if there's somebody else in
14 the residence, right?

15 A. Correct.

16 Q. Now, at some point in time, though, after the sweep is over,
17 you came to learn that there was a gun case found?

18 A. Yes.

19 Q. And do you know who informed you of that? Was that Officer
20 Witkowski?

21 A. I believe he was one of them, but several tac members and
22 even their sergeant told me about the black gun case located in
23 the room.

24 Q. And did anyone tell you that they opened up the black gun
25 case and they saw a gun in there?

1 A. Not to me, no.

2 Q. Now, Mr. Wall asked you some questions about policy and it's
3 good procedure that you don't have people walking around in a
4 house, right?

5 A. Correct.

6 Q. Unescorted, right?

7 A. Yes.

8 Q. And you indicated that, you know, you had knowledge of at
9 least one gun in the residence, right?

10 A. Yes.

11 Q. And that would be one of the main reasons, at least from
12 your recollection, that you weren't going to let somebody go and
13 roam the house alone, right?

14 A. Yes.

15 Q. Where was that gun?

16 MR. WALL: Objection. Rephrase the question. It was
17 a gun case.

18 MR. BOYLE: Well, no. That wasn't what his testimony
19 was.

20 BY MR. BOYLE:

21 Q. Your testimony on direct was that you did not want somebody
22 to walk around the house when there's a knowledge of at least
23 one gun in the residence. Is that what you said on direct?

24 A. Yes.

25 Q. All right. Tell me what knowledge you had. Because you're

1 telling us here today that there was the knowledge of the one
2 gun which is why you didn't want Ms. Kneuppel walking around the
3 house. Tell me what knowledge you had to not allow her to walk
4 around where there was one gun in the residence.

5 A. I had no clue where the gun was in the residence.

6 Q. Did somebody tell you after the protective sweep that there
7 was a gun in the residence?

8 A. A long black gun case.

9 Q. So there was no knowledge that you had of a gun being in the
10 residence, right?

11 A. (No response.)

12 Q. Or was there? I'm trying to find out.

13 A. I was informed of a long black gun case.

14 Q. So when you approach Ms. Kneuppel and said, again, about the
15 shoes, and you have no recollection of the exact words but
16 you're assuming here today that she said "yes" or "okay" and
17 then walked into the residence, right?

18 A. Yes.

19 Q. Now, you never asked her for consent to go in the residence.

20 A. No.

21 Q. You never asked her whether or not she will allow you to
22 enter her home to obtain an item. You never asked her
23 permission to enter the home, correct?

24 A. No.

25 Q. So when you walked in there you walked with her side by

1 side, basically, right, into the residence?

2 A. (No response.)

3 Q. Or --

4 A. Well, she led the way. She knew where she was going.

5 Q. And were there other officers still in the home?

6 A. At that time, no.

7 Q. And you walked directly to the bedroom that was, in essence,
8 the master bedroom; is that right?

9 A. Yes.

10 Q. Now, you told us that when you walked in -- and I know the
11 exhibits, you still have them up there, correct?

12 A. No.

13 Q. Oh, you don't? Oh, okay. I'll get them back in a second.

14 You were able to observe the black gun case in the one
15 bedroom, right?

16 A. Yes.

17 Q. And, as we've identified -- I show you Exhibit Number 1,
18 which I have another copy. It has been moved and pulled out
19 from underneath the bed; is that right?

20 A. Yes.

21 Q. Now, let's talk about when you went into the master bedroom.
22 You entered and Ms. Kneuppel, I think you said, went to the left
23 side of the bed; is that right?

24 A. Yes.

25 Q. And you went -- I'm going to show you what's been marked as

1 Exhibit 3 -- to the end of the bed. Is that what I understand?

2 A. Correct.

3 Q. And you observed the pair of jeans that is currently on the
4 bed, right? On the floor?

5 A. Yes.

6 Q. And that's where the black -- or the Nike flip flops were.
7 By the jeans; is that right?

8 A. By the jeans, under the jeans, next to the jeans. They were
9 relatively close to each other.

10 Q. You're the one who physically went over and picked up the
11 flip flops.

12 A. Yes.

13 Q. And Ms. Kneuppel is where? Still on the left side of the
14 bed?

15 A. Yes.

16 Q. Now, when you saw these gun cases, they're stacked on top of
17 each other, right?

18 A. Uh-huh.

19 Q. You gotta say "yes" or "no" for the record.

20 A. Sorry. Yes.

21 Q. And do you say anything to Ms. Kneuppel like "What are
22 these?", "What's in those?", anything along that lines?

23 A. No.

24 Q. And you just make the observation and you leave.

25 A. Yes.

1 Q. You go, you bring the flip flops for Mr. McMillian who is
2 where, in the squad?

3 A. At that time he's in the squad.

4 Q. Where does Ms. Knueppel go after you leave the bedroom?

5 A. I believe it was the kitchen area or the living room area.

6 Q. And who did she go with?

7 A. At that time my partner was still there and my sergeant,
8 Sergeant Burmeister, was still there.

9 Q. Okay. And so, she goes with your partner and Sergeant
10 Burmeister.

11 A. Yes.

12 Q. And she goes somewhere in the house with them, right?

13 A. Yeah, either the -- the side door leads to the kitchen and
14 then it kind of wraps around into the living room. So it was
15 either -- we stayed in the living room and the kitchen most of
16 the time.

17 Q. Okay. I gotta clarify that. When you said we stayed in the
18 kitchen or the living room, that's -- who is the "we"? You,
19 your partner, and --

20 A. Myself, Ashley, Police Officer Walkowiak, and Sergeant
21 Burmeister.

22 Q. Okay. Just so I'm clear. You go in the bedroom, you pick
23 up the flip flops, and you leave the bedroom, right?

24 A. Yes.

25 Q. You go and bring the flip flops out to Mr. McMillian, or

1 does somebody else do that?

2 A. I passed them off to somebody, and that person gives them to
3 Mr. McMillian.

4 Q. All right. And Ms. Kneuppel is then still in your general
5 area, that being in the living room or the kitchen area.

6 A. Yes.

7 Q. And how long do you wait in the living room/kitchen area? I
8 mean, are you there for like 15 minutes, 20 minutes at least?

9 A. It's hard to say because I remember going outside.

10 Q. And Sergeant Berman and your partner, though, are also in
11 that area, right?

12 A. Yes.

13 Q. So they were in the house at the same time that you were in
14 there getting the flip flops.

15 A. No.

16 Q. They came in after?

17 A. After I passed off the flip flops Ashley remained in the
18 house. They came in afterwards.

19 Q. And did you inform them about the gun cases?

20 A. Yes. My sergeant and I did, yes.

21 Q. Now, you said that one of the things that when you went down
22 to pick up the flip flops is you noticed "HK Arms" on one of the
23 cases.

24 A. Yes.

25 Q. And that would have been the gray case, correct?

1 A. Yes.

2 Q. Now, these gun cases were stacked between the nightstand and
3 the bed, correct?

4 A. Bed headboard, yes.

5 Q. I'm going to show you what's again been marked as Exhibit 2.

6 Are these -- can I ask, are these the actual exhibits
7 that I should have him mark up? Or the ones --

8 THE COURT: If you can mark the one that was
9 previously marked.

10 MR. BOYLE: Oh, okay. And I have to ask, does the
11 court have exhibit stickers?

12 THE CLERK: We do.

13 MR. BOYLE: Okay. I'll need one in a second.

14 BY MR. BOYLE:

15 Q. If I can ask you, with Exhibit Number 2, can you just make a
16 line as to where the gun cases were? However you want to do it.

17 (Brief pause.)

18 Q. Do you know what, I'm not going to ask you to mark it yet.
19 I just want to do this for at least a description.

20 You agree that where I'm pointing to on this -- and I'm
21 just gonna make a little tiny X -- is the corner of the bed, yes?

22 A. From that angle, yes.

23 Q. Okay. And then the other place where I'm gonna mark another
24 X is the back corner of the dresser.

25 A. Yes.

1 Q. Nightstand. Right?

2 A. Yes.

3 Q. All right. It appears from looking at this photograph that
4 there's a gap between the bed and the nightstand. You agree
5 with that.

6 A. Yes.

7 Q. Is that gap where the gun cases were found? In that air
8 space between those two items?

9 A. Yes.

10 Q. All right. Now, you agree, and I know this is a tough
11 picture, but the nightstand has to be at least a foot, foot and
12 a half in depth. You agree with that, at minimum?

13 A. Yes.

14 Q. All right. So is it fair to say that, again, the air space
15 between the two furniture items is where these things were
16 stacked up?

17 A. In-between the bed and the nightstand, yes, that space.

18 Q. And --

19 Do you have -- okay.

20 You never touched the gun case when you were in there
21 on that time, correct?

22 A. No. Or, yes, you're correct.

23 Q. And I'm gonna mark a picture as Exhibit Number 5. I'm going
24 to show you this. Do you know what this is?

25 A. That's the gray gun case.

1 Q. Okay. And that says "HK USP" on the photograph that we're
2 looking at, correct?

3 A. Yes.

4 MR. BOYLE: And I'd move into evidence Exhibit
5 Number 5 as the gun case.

6 MR. WALL: No objection.

7 THE COURT: Received.

8 (Exhibit 5 offered and received.)

9 BY MR. BOYLE:

10 Q. Now, where on the gun case does it say HK Arms?

11 A. It doesn't.

12 Q. Where on the gun case that you saw, on July 6, 2011, did you
13 see the words "HK Arms"?

14 A. It appears I didn't.

15 Q. Are you familiar with this gun case? Are you familiar with
16 this gun case?

17 A. Yes.

18 Q. You agree with me that if a person examined the top side and
19 the bottom side of this gun case -- well, strike that.

20 This gun case that I'm showing in Exhibit 5, which was
21 the gun case that was found on July 6th in Mr. McMillian's home,
22 the only place on the entire gun case that it has the letters
23 "HK" is what we're looking at in this picture. You would agree
24 with that statement.

25 A. In the picture, yes.

1 Q. You would agree with me that if this gun case was located
2 between the bed and the nightstand, that this lettering of "HK"
3 would have been obscured by the furniture. You would agree with
4 that.

5 A. All depends on how far the space was in-between the
6 nightstand and the bed frame.

7 Q. Well, showing you Exhibit Number 2 again, you would agree
8 that the space between the bed and the nightstand is not a space
9 of any great significance. In other words, that gun case
10 couldn't have been turned with the letters "HK" facing outward,
11 there's not that much space there. You would agree with that?

12 A. Yes.

13 Q. And you would also agree to me that it appears from looking
14 at Exhibit Number 2, that the width between the bed and the
15 nightstand is not much greater -- maybe an inch or two at
16 most -- than the depth of what this gun case would be? You
17 would agree with that?

18 A. No.

19 Q. Okay. Well, how many inches was it?

20 A. I don't know.

21 Q. I'm sorry?

22 A. I don't know.

23 Q. I'm sorry?

24 A. I don't know actual inches.

25 Q. Okay. You have told us here that you did not view the words

1 "HK Arms" on -- well, strike that.

2 You've told us here today on Exhibit Number 5 that it
3 does not say "HK Arms," correct?

4 A. That full phrase, yes.

5 Q. Okay. You would agree with me that it does say, "HK. "In a
6 world of compromise some don't--", and then big letters of
7 "USP." You agree with that?

8 A. Yes.

9 Q. You would agree that you did not view the phrase and letters
10 I just read into the record. You would agree with that.

11 A. I would disagree with that.

12 Q. Okay. Did you see those letters when you went in there to
13 pick up the flip flops?

14 A. The HK.

15 Q. Okay. How did you see that if the gun cases were stacked on
16 top of each other between two pieces of furniture, in the gap
17 area between the two pieces of furniture?

18 A. The gap in-between the nightstand and the bed was not that
19 small as what you're portraying it to be. As I bent down to
20 pick up the flip flops I was no more than two feet away from the
21 gun cases and I can easily see the HK.

22 Q. I need to ask you --

23 I would like to mark this as Exhibit Number 6. Is
24 that the same one? Oh, do you know what, I'm going to mark this
25 as Exhibit Number 6 because mine is a little cleaner.

1 MR. WALL: Nice.

2 BY MR. BOYLE:

3 Q. I'm going to show you Exhibit Number 6, which is Exhibit
4 Number 3. Do you agree with that or do you need to see Exhibit
5 Number 3?

6 MR. WALL: Stipulate.

7 MR. BOYLE: Okay.

8 BY MR. BOYLE:

9 Q. Again, here is the -- at least what appears to be a cleaner
10 or more -- or more focused printing of the dresser and the bed.
11 You would agree with that?

12 A. Yes.

13 Q. And this is as it was, as far as you can recall, the way it
14 was, other than the jeans and the flip flops being in the room
15 and the gun cases being between the dresser and the bed?

16 A. That's after search warrant.

17 Q. Yes, I understand. But this is -- for the rest of the
18 items -- other than the jeans, the flip flops, and the gun cases
19 that are now on top of the bed, this is as best as you can
20 remember the layout of the furniture and the dresser, correct?

21 A. Roughly.

22 Q. Well, what do you mean by "roughly"? What got moved?

23 A. In a search warrant everything gets moved. I helped search
24 this room so I know exactly what was moved, what was opened,
25 what was closed. So you're talking about moving mattresses,

1 moving furniture, lifting up furniture, see if anything is
2 underneath the furniture, mattresses, et cetera, et cetera.
3 Everything from one corner goes into the other corner and then
4 vice versa to make sure you don't miss anything.

5 Q. Did you move the nightstand?

6 A. Nightstand was moved, yes.

7 Q. Who moved it?

8 A. I don't know if it was me, but I did search the lower
9 drawer. I missed this top drawer right here. I didn't realize
10 that popped out. It was lifted up and searched underneath. The
11 safe was also moved. This whole bed mattress was flipped up.
12 Behind this bed frame was pulled off against the wall. So the
13 whole furniture, everything was moved.

14 Q. I asked you, Officer, who moved the nightstand?

15 A. There were several people in the room. I was one of them.
16 I don't know who physically moved it, but I looked underneath
17 it.

18 Q. Did you physically move the nightstand as far as you can
19 recall?

20 A. No.

21 Q. Okay. You did not see anyone physically move that
22 nightstand, did you? Observe it, in actuality, not assumptions.

23 A. Somebody did because I looked underneath it. I don't
24 remember --

25 MR. BOYLE: Okay. I move for the admission of -- oh,

1 it's stipulated to.

2 BY MR. BOYLE:

3 Q. You never opened, prior to the execution of the search
4 warrant, the black gun case, did you?

5 A. No.

6 MR. BOYLE: All right, I'm going to mark this exhibit,
7 please, as Exhibit Number 7.

8 BY MR. BOYLE:

9 Q. This is a picture of a dresser. Nightstand, I'm sorry.

10 A. Yes.

11 Q. There is a safe next to it?

12 A. Yes.

13 Q. That would be on the right-hand side?

14 A. Yes.

15 Q. There is the bed frame on the left side of the picture?

16 A. Yes.

17 Q. There is -- it appears to be separated from the -- the frame
18 of the bed from the headboard; you would agree with that?

19 A. Yes.

20 Q. You would agree that from looking at this picture the safe
21 is pretty much right against the wall on Exhibit Number 7?

22 A. Yes.

23 Q. You would agree that it appears that the safe is also right
24 against the nightstand on its left-hand side? You would agree
25 with that?

1 A. From that angle, yes.

2 Q. Yes. You would agree that there appears to be maybe three
3 inches of space between the nightstand and the bed headboard
4 area in this picture, correct?

5 A. It could be three inches.

6 Q. Okay.

7 A. It could be five inches, it could be six inches. There is a
8 space in-between the headboard and the nightstand.

9 Q. Sure. So let's go with three to six inches, yes?

10 A. Yes.

11 Q. Okay. So, just for the sake of the record, whatever
12 distance there is between the headboard and the nightstand is
13 contingent upon the safe being there.

14 In other words, with the safe being on the right side
15 of this picture abutting the wall, abutting the nightstand, the
16 nightstand cannot move to the right, it can only move to the
17 left, correct?

18 A. That general direction left or right, yes.

19 Q. Yes.

20 I move for the admission of Exhibit Number 7.

21 MR. WALL: No objection.

22 THE COURT: It's received.

23 (Exhibit 7 offered and received.)

24 BY MR. BOYLE:

25 Q. After you see these gun cases you notify somebody, your

1 sergeant, at some point in time, and it is at that point in time
2 when you contact your dispatcher to do a SNEW check? Or when do
3 you ask that this be run?

4 A. I don't know the exact time. It was probably 10 -- when I
5 had time to do it, 10, 15 minutes to do it. After I saw those
6 two gun cases, knowing the other gun case was in the other room,
7 making sure he was already going downtown, letting my supervisor
8 know all the information that I obtained, having him call down
9 to the Detective Bureau and have the detectives respond to our
10 scene. Within that timeframe is when I made the call to our
11 clerks who work at our station to have the FBI number ran.

12 Q. Ultimately you find out he is a convicted felon.

13 A. Yes.

14 Q. And you then do what?

15 A. I advised the detectives that were there that, "Hey, he's a
16 convicted felon."

17 Q. Okay. Ashley Kneuppel was a resident in the home when you
18 arrive, right?

19 A. Yes.

20 Q. You had knowledge that she was a resident, that meaning a
21 person who lived in the residence also prior to your arrival
22 that day, right?

23 A. Yes.

24 Q. So, you never -- well, strike that.

25 When Ashley was outside, after Tyrone was handcuffed,

1 while the protective sweep was going on, she would not have been
2 allowed to go back into her residence without an officer with
3 her. You would agree with that.

4 A. Yes.

5 Q. You would also agree with me that if she wanted, after the
6 sweep was over, to go into the residence to get flip flops, that
7 you would not have allowed her to walk freely throughout her
8 home.

9 A. That's correct.

10 Q. You did not give her an option -- well, strike that.

11 You've told us you did not get consent from her to go
12 into that residence for the flip flops.

13 A. Correct.

14 Q. And when you walked into the residence you told us that
15 there were no other officers in there, right?

16 A. That's correct.

17 Q. When you come out of the bedroom, though, with the flip
18 flops, eventually some officers come into the residence.

19 A. Yes.

20 Q. And that -- the officers coming back into the residence,
21 though, was prior to you telling your sergeant about the gun
22 cases being seen in the bedroom. Is that what I understand?

23 A. My gun cases, yes.

24 Q. Yes.

25 A. Yes.

1 Q. You then at some point in time after they come back into the
2 residence, and Ashley is in there and you're in the kitchen area
3 or the living room area, you inform your sergeant, "Hey, there's
4 a couple gun cases in that bedroom," right?

5 A. Yes.

6 Q. And then you check and he is a convicted felon, right?

7 A. Yes.

8 Q. Now, you knew, though, that there was a gun case at least in
9 that other bedroom prior to reentering the residence with
10 Ashley; is that what I understand? Yes?

11 A. Yes.

12 Q. And you would agree with me that when you learned that there
13 was a gun case in the child's bedroom, prior to your re-entry
14 or -- not re-entry -- prior to your entry into the home, that
15 that home could not be accessed by Ms. Kneuppel.

16 A. Yes.

17 Q. So, is it fair to say that until you sort out -- after the
18 officers find the black gun case in the child's bedroom, until
19 you're able to sort out whether or not he's a convicted felon or
20 if it's a -- I guess a stolen gun case or whatever, that home
21 was not able to be accessed by the resident who was the rightful
22 owner, that being Ms. Kneuppel.

23 A. Correct. It was -- we pretty much froze the house. The
24 scene was freezed.

25 Q. The scene was frozen after the identification of that

1 original -- or the observation of that original gun case, that
2 being the black one, yes?

3 A. Yes.

4 MR. BOYLE: I have nothing further.

5 THE COURT: Mr. Wall, do you have anything else?

6 MR. WALL: Yes. I'd like to see the Exhibits 5, 6 and
7 7 for just a bit.

8 REDIRECT EXAMINATION

9 BY MR. WALL:

10 Q. Okay. Exhibit 5, the gray gun case. Is that -- based to
11 the best of your memory, is that the side of the gun case that
12 you saw through the nightstand?

13 A. Yes.

14 Q. You did not see -- and it's not shown in here -- you did not
15 see something written on the side.

16 A. No.

17 Q. Okay. And it says, in block letters, "HK USP." You had it
18 wrong when you recalled "HK Arms."

19 A. No explanation where the "Arms" came from.

20 Q. Okay. Somewhere in your memory.

21 A. Well, what I saw it's HK.

22 Q. And did HK mean something to you?

23 A. Just HK alone, no. Not to myself, no.

24 Q. Did you recognize it as a gun case?

25 A. Yes.

1 Q. You said in your -- during cross-examination here that you
2 know that after you saw the two gun cases stacked between the
3 nightstand and the bed that the search warrant was conducted.

4 The search warrant happened after you were in the
5 bedroom to get the flip flops and saw the two gun cases.

6 A. That happened well after.

7 Q. Well after.

8 A. Yes.

9 Q. And you were part of that search warrant.

10 A. Yes.

11 Q. And you were in the -- this particular bedroom later on.

12 A. Yes.

13 Q. And in this particular bedroom you were moving furniture?

14 A. Yes.

15 Q. Is that pretty standard?

16 A. Like I said, on the search warrant everything gets moved.

17 Q. Everything gets moved.

18 A. Everything gets moved. Everything gets rifled through.

19 Socks, drawers, you name it. We go through it.

20 Q. Okay. And you were shown -- it's essentially Exhibit
21 Number 2 and 3 which are pretty similar. Exhibit Number 3, this
22 is post search warrant, correct?

23 A. Correct.

24 Q. And post search warrant we see that the nightstand, from
25 this angle, looks pretty close to the bed frame, correct?

1 A. Yes.

2 Q. Is it your testimony that the nightstand and the bed frame
3 were moved during the search warrant?

4 A. At one point in time they were moved.

5 Q. Such that at the end of the search warrant this picture,
6 number 3 and number 2, would be accurate pictures.

7 A. Yes.

8 Q. After you talked to Ashley about the flip flops and she said
9 she knew where they were, did you understand that you -- in your
10 mind, did you understand that you were to go with her and get
11 them?

12 MR. BOYLE: I'm going to object. Well, forget it. He
13 can answer.

14 THE WITNESS: Yes.

15 BY MR. WALL:

16 Q. Was there any other interpretation in your mind, at that
17 time or now, as to what --

18 A. She never said no.

19 Q. And you were going to go get them.

20 A. Yes.

21 Q. And she -- it was your understanding that she wanted to get
22 them.

23 A. Yes.

24 MR. WALL: Okay. I have nothing else.

25 /

RECROSS-EXAMINATION

BY MR. BOYLE:

Q. Officer Shull, you know based upon your knowledge and experience as a Milwaukee police officer, that in order to enter a person's home you have to gain consent from that individual to enter the home, correct?

A. Normal circumstances, yes.

Q. You never asked Ashley Kneuppel, "Can I have consent to go in your house and get a pair of flip flops in the bedroom?", did you?

A. In those exact words, no.

Q. What words did you use as a Milwaukee police officer to gain consent to go and enter a resident of a lawful owner of a residence, that being Ashley Kneuppel?

A. I don't recall what I said earlier, but I believe it was to the point of, "Do you know where the flip flops are?", with her saying, "Yes, let's go get them," and we both walked to the back.

Q. And you're telling us in this courtroom that that was enough, quote-unquote, consent for you as a Milwaukee police officer to enter the residence of a human being, specifically 6333 West Darnell?

A. That was enough to tell me that she was going to go get them, and with my knowledge of a firearm in one of the rooms that she wasn't going to go alone.

1 Q. All right. And when you say knowledge of a firearm in one
2 of the rooms, what knowledge did you have of a firearm?

3 A. Just of the long black gun case, but 99 percent of the time
4 if there's a gun case somewhere there's going to be a gun.

5 Q. Okay. So you're assuming that there was a firearm in the
6 residence, correct, because of a gun case?

7 A. Yes.

8 Q. So when you said that the knowledge of a firearm in a
9 residence, you meant the assumption that there was a firearm in
10 the residence because of a black gun case, right?

11 A. Yes.

12 Q. Now, you -- when she said, "Okay let's go and get it," which
13 is what you just said now, right? "Let's go and get them."

14 A. Something to that effect.

15 Q. Right. Because you don't remember the exact words that she
16 used, as you sit here today.

17 A. Correct.

18 Q. All right. And in your report that you wrote, it indicates
19 that, and I'll read it:

20 "I observed that he was not wearing any shoes.
21 McMillian stated that he wanted his Air Jordan flip flops. I
22 asked Ashley where they were located, to which she stated, 'They
23 are in our bedroom.' I walked with Ashley to the bedroom and
24 bent over to pick up the flip flops." Et cetera and so forth.

25 Do you remember that in your report?

1 A. Yes.

2 Q. Okay. There's nothing in here that says Ashley responded
3 with any words when you stated to her that you wanted to know
4 where they were located. You agree that in your report she
5 never responded as far as what you wrote down.

6 A. Yes.

7 Q. All right. So, when you wrote your report and put that she
8 responded with, "Okay, let's go and get them," right? You agree
9 with that.

10 A. Correct.

11 Q. But you remember those words, as you sit here today, that
12 she said something along that lines.

13 A. Something along the lines of the positive, because if she
14 would have said no, he would never have got his Air Jordan flip
15 flops, he would have went barefoot.

16 Q. Right. Because she had a right to say, "I'm not getting his
17 flip flops," right?

18 A. Correct.

19 Q. She had a right to say, "I'm not walking with you to our
20 bedroom," right?

21 A. Correct.

22 Q. The scene, though, was already frozen at this point in time,
23 right?

24 A. Yes.

25 Q. So you never got consent from her, directly. In other

1 words, "Can I have consent to go into your residence?" Do you
2 agree? Right?

3 A. Yes.

4 Q. But it was really, would you not say, would you agree with
5 me, that it was really irrelevant at that point to gain consent
6 from her because the scene was already frozen, she couldn't walk
7 in there?

8 MR. WALL: Objection, calls for a legal conclusion.

9 MR. BOYLE: Well, I'll ask it a different way.

10 BY MR. BOYLE:

11 Q. The scene was frozen when you had this conversation with
12 her, right?

13 A. Yes.

14 Q. Because of the black gun case being found on the protective
15 sweep, correct?

16 A. Yes.

17 MR. BOYLE: All right. I have nothing further.

18 MR. WALL: Nothing else, Your Honor.

19 EXAMINATION

20 BY THE COURT:

21 Q. Officer Shull, I just have a couple of picture framing
22 questions.

23 A. Yes.

24 Q. You testified that when you arrive at the house you went to
25 a side door?

1 A. Yes.

2 Q. Is the side door the main entrance to this residence?

3 A. There is -- from what I remember there is a -- I wanna say
4 there's a front door, but the side door led out to the driveway
5 and I -- I would say that's a secondary door. And I believe
6 there was a front door. We never used the front door, though.
7 We used always the side door.

8 Q. Is this a single-family residence, a duplex?

9 A. It's a single-family residence. Ranch. Had a basement.

10 Q. And when you -- when you approach the side door do you have
11 to climb steps to get to where the door is, to get to the
12 threshold? I could not visualize what you were describing.

13 A. I believe there was one stoop or one step to the door. I
14 don't recall a screen door. I just recall the main door.

15 Q. And when you testified that Ms. Kneuppel -- she came out of
16 the residence and was about 10 to 15 feet away from you.

17 A. Yes.

18 Q. Is this the sidewalk? Is this the yard of the residence?
19 Can you just kind of lay out the picture for us a little bit
20 more?

21 A. That's the driveway. The driveway is on the east side of
22 the house. You have the north side of the house. The east side
23 of the house is where the one door is. All three cars are
24 parked in the driveway. There was a garage, I believe. I don't
25 know what else you would need to know.

1 Q. Okay. And now as to the bedroom in question, the subject of
2 Exhibits, I think, 2, 3. You testified that the furniture was
3 moved during the course of the execution of the search warrant;
4 is that correct?

5 A. Yes.

6 Q. And these pictures were taken after the execution of the
7 search warrant?

8 A. I believe so, yes.

9 Q. And was the furniture put back where you first saw them?

10 A. Towards the end of the search warrant I left. It was going
11 on 3:00 in the morning, 4:00 in the morning, and I was over. My
12 shift ended at 4:00. So I don't know what was physically moved
13 back into place. But those pictures look a lot nicer than what
14 the room was when I left.

15 Q. Okay. Do the pictures look like the room looked when you
16 first arrived looking for the flip flops?

17 A. Yes.

18 THE COURT: I don't have anything else. Any
19 questions?

20 MR. WALL: No, Your Honor.

21 MR. BOYLE: No.

22 THE COURT: Thank you, Officer Shull, you may step
23 down.

24 (Witness excused at 2:53 p.m.)

25 THE COURT: Any other witnesses?

1 MR. WALL: Yes, Your Honor. Detective Rodolfo Gomez
2 as to the search warrant. I'll go get him.

3 RODOLFO GOMEZ, GOVERNMENT WITNESS, DULY SWORN

4 THE CLERK: Please be seated. Please state your full
5 name and spell your last name for the record.

6 THE WITNESS: Rodolfo Gomez. R O D O L F O.
7 G O M E Z.

8 DIRECT EXAMINATION

9 BY MR. WALL:

10 Q. Mr. Gomez, for whom do you work?

11 A. I am a detective for the city of Milwaukee's police
12 department.

13 Q. How long have you been employed with the City of Milwaukee
14 Police Department?

15 A. 10 years.

16 Q. How long have you been a detective?

17 A. Four years.

18 Q. What's your current assignment?

19 A. I am assigned to the Homicide Division.

20 Q. And how long have you been with the Homicide Division?

21 A. Two years, sir.

22 Q. Direct your attention to July 6th of this year, 2011, what
23 shift were you working?

24 A. I worked early shift, which is from 4:00 p.m. to 12:00 a.m.

25 Q. Okay. And during that shift is there some type of briefing

1 of the detectives?

2 A. Yes, sir.

3 Q. And what does that consist of and who does that?

4 A. We do a rollcall every day from 3:48 to 4:00 p.m. The
5 lieutenants normally conduct the rollcall. And it basically
6 comprises of updating officers of any changes in the department,
7 any personnel orders.

8 Q. Okay. Did you have a conversation with a Lieutenant Jeff
9 Point that day?

10 A. Yes, sir.

11 Q. Who was the nature of that conversation?

12 A. Well, the first conversation he instructed me to make
13 contact with Detective William Smith regarding a homicide search
14 warrant.

15 Q. And what was your understanding of what your duties would be
16 regarding that search warrant?

17 A. Yes. He wanted me to type up an affidavit based on
18 information that was gleaned from Detective Smith.

19 Q. Okay. And did you have occasion to call Detective Smith or
20 did he call you?

21 A. Yes, sir, we made telephonic contact.

22 Q. Now, we're talking a little bit after 4:00?

23 A. Yes, sir.

24 Q. Do you know where he was at the time you first contacted
25 him?

1 A. No, I did not.

2 Q. Did you come to find out where he was located during the
3 course of other conversations?

4 A. Yes.

5 Q. And where was that?

6 A. I knew that he was at 6333 -- my brain just slipped here.

7 Q. West Darnell?

8 A. West Darnell, there you go, yes. And it was not in the city
9 of Milwaukee, though.

10 Q. And what was the substance of those early phone calls?

11 A. Well, basically Detective Smith --

12 MR. BOYLE: Well, Judge, I'm going to object because I
13 think it calls for hearsay.

14 MR. WALL: It goes for what he did in preparing the
15 warrant.

16 THE COURT: I will allow it because generally the
17 rules of evidence, as you know, do not apply in evidentiary
18 hearing, and plus it goes as to what steps he took next in
19 preparing the warrant.

20 THE WITNESS: Detective Smith informed me that they
21 were currently at that location, 6333 Darnell, regarding the
22 arrest of a homicide suspect which is Tyrone McMillian.

23 BY MR. WALL:

24 Q. Okay. And, again, you understood your assignment was to
25 type up an affidavit for a search warrant?

1 A. Yes, sir.

2 Q. For that residence.

3 A. Correct.

4 Q. Okay. So you're talking to Detective Smith, correct?

5 A. Yes, sir.

6 Q. And what else are you doing to inform yourself as to, I
7 guess, probable cause?

8 A. Well, I started reading the M file for that particular
9 double homicide.

10 Q. What's an M file?

11 A. That is a homicide file. And it's an accordion file where
12 we keep all evidence such as discovery, police reports, photos.
13 Anything that has taken place, been written or taken in as
14 evidence for that particular homicide.

15 Q. Was anybody with you when you were reviewing the homicide
16 file and the reports?

17 A. Yes, sir. There was another detective named Eric
18 Gulbrandson, G U L B R A N D S O N.

19 Q. And do you know whether or not he had knowledge of this
20 particular homicide?

21 A. Yes, sir, he did.

22 Q. And this is actually a double homicide, correct?

23 A. That is correct.

24 Q. As a result of your conversation with Detective Smith, did
25 you start typing up a face sheet for the search warrant and then

1 the affidavit?

2 A. Yes, sir, I did.

3 Q. Okay. I show you what's been marked as Exhibit Number 4
4 which --

5 This was in the record about three or four different
6 times in various pleadings but we'll put it back in.

7 Do you recognize that?

8 A. Yes, sir.

9 Q. And what is Exhibit 4?

10 A. That is the search warrant and affidavit that I drew up
11 regarding the residence of 6333 West Darnell Avenue.

12 Q. Who gave you the -- in looking at page 1, and we'll call it
13 page 1 of 6, who gave you the description of the residence?

14 A. Detective Smith.

15 Q. There's a typo in -- looks like -- described premises here,
16 it's -- you start to have a typo. What happened there?

17 A. Well, you basically said it. It was a type error.

18 Q. Whose fault was that?

19 A. That was mine. And I had it corrected.

20 Q. He actually gave you 6333 but you had a typo?

21 MR. BOYLE: Well, I'm going to object to the form of
22 the question. Calls for leading.

23 THE COURT: Sustained.

24 BY MR. WALL:

25 Q. Where did you get 66 -- how did it go from 63 to 66?

1 A. Well, Detective Smith had originally given me 6333, and I
2 inadvertently typed in 6633.

3 Q. Now, turning to the affidavit, page 3 of 6 on the bottom
4 there.

5 A. Yes.

6 Q. Paragraphs 1 through 4. Where did you get that information?
7 Paragraph 1 is about you, but paragraphs 2 through 4, where did
8 you get all that?

9 A. That information was gleaned from the file. Some of the
10 information of which I read from the M file and from Detective
11 Gulbrandson.

12 Q. And you typed that up.

13 A. Yes, sir.

14 Q. Along with the header there, "I, Detective Gomez"?

15 A. Yes.

16 Q. Okay. And where did you -- well, was that -- were
17 paragraphs 1 through 4 completed before a period of time in
18 which you typed up paragraph 5?

19 A. Yes.

20 Q. And where did you get the information in paragraph 5?

21 A. That information was gleaned from Detective Smith who was on
22 scene.

23 Q. Okay, next page. It says 4 of 6. Paragraph 6. Where did
24 you get that information from?

25 A. That information was also obtained from Detective Smith.

1 Q. Paragraph 5 -- um, sorry, to go back. Second sentence there
2 it says, "Executed an arrest warrant at the residence." Where
3 did you get that information from?

4 A. That specific wording I just wrote down when Detective Smith
5 told me that Mr. McMillian was arrested on an arrest warrant.

6 Q. Okay. So he said "an arrest warrant"?

7 A. Yes.

8 Q. And paragraph 7, where did you get that information?

9 A. That's from information that was relayed to me by Detective
10 Smith, and also information that I found via the MPD databases.

11 Q. Okay. So would it be correct to say that at the beginning
12 of this search warrant, really, paragraphs 1 through 4 are
13 probable cause and then 5, showing the address, were for the
14 homicide?

15 A. Pretty much, yes. Yes, sir.

16 Q. Now, there was -- was there one phone call or were there a
17 series of phone calls back and forth between you and Smith?

18 A. There were at least four to five phone calls, sir.

19 Q. Okay. Was -- were you getting additional information
20 through the consecutive phone calls?

21 A. Yes.

22 Q. Okay. Paragraph 8 is your probable cause paragraph. Why is
23 paragraph A in there? Or, I'm sorry, subsection A, 8A.

24 A. 8A, where it says "recording equipment"?

25 Q. Yes.

1 A. That was included based on the homicide information I had
2 received. We had knowledge that there had been a burglary that
3 was committed before the homicide.

4 Q. And the rest of these paragraphs, can you go through -- how
5 long have you been doing homicides, two years?

6 A. Two years, sir.

7 Q. How many have you investigated, approximately?

8 A. Well over 100.

9 Q. Okay. What is the relevance of the rest of the
10 subparagraphs here? If you can just kind of narrate that.

11 A. Okay. I'll start at B, cell phones. Everybody uses cell
12 phones. I think that's pretty self-explanatory. They either
13 text, use photos, or make phone calls. They have contacts in
14 there.

15 Clothing --

16 Q. Any relevance to cell phones taking pictures?

17 A. Absolutely. People take pictures -- most of the phones
18 nowadays have cameras and video recorders.

19 Q. And how would that be relevant to a homicide investigation?

20 A. It's been my experience that, not only homicides but other
21 crimes, people take pictures sometimes of the proceeds,
22 sometimes of their acts, their weapons. They include firearms,
23 body armor, pictures of themselves posing with their weapons.

24 Q. Go on. C?

25 A. C, clothing. You know, if somebody used it in a crime,

1 especially in a homicide, we would be looking for any biological
2 evidence such as DNA or back-splash from blood from the victim.

3 D, personal papers, documents. You know, you may find
4 insurance papers, threatening letters, intimidating letters or
5 contracts.

6 E, monies. Well, people who commit robberies or
7 murders, sometimes they get paid or they keep the proceeds.
8 Sometimes they hide them, keep them for some time, sometimes
9 they spend them right away.

10 As far as F, for firearms and ammunition. Obviously,
11 I was investigating a homicide, so I was definitely looking for
12 any firearms or ammunition, any gun cleaning supplies which is
13 indicative of a person who has a firearm.

14 Q. And these victims were shot.

15 A. Yes, sir. They were killed with a firearm.

16 And G, the computers and/or electronic devices.
17 Again, most phones such as my iPhone is considered a computer.
18 I know on personal experience that when I back up my phone it
19 saves it to the hard drive of my laptop or a storage device, and
20 most of that evidence that is normally or typically on a phone
21 could be saved on a computer.

22 Q. Okay. Paragraph 9 is -- where did you receive that
23 information?

24 A. That was part of the description that Detective Smith had
25 given me regarding the description of the house. As with 10.

1 Q. After you typed up your search warrant and your affidavit,
2 did you take it to anybody for review?

3 A. Yes. I had my lieutenant, Jeffery Point, review it. He
4 notarized it. I then took it to the assistant district attorney
5 Grant Huebner, who also reviewed it and told me that it was
6 good, I could now forward it to the judge, the duty judge.

7 Q. Did you talk to Detective Smith at all about the search
8 warrant?

9 A. Yes, sir. Basically, the last phone call I had with him I
10 read back some of the items -- or the affidavit explaining what
11 I had written up. I asked him if I had missed anything.
12 Detective Smith stated it sounded like it was good, nothing that
13 he could think of at the time. And then we moved forward with
14 the executing or the signing of the search warrant.

15 Q. And how did you do that?

16 A. I had made contact with the duty judge who on this
17 particular day was going to be Judge Martens, Kevin Martins.
18 M A R T E N S.

19 Q. You presented everything to him at his house, right?

20 A. Yes, sir.

21 Q. And what happened?

22 A. He reviewed it and he signed it and approved it on that
23 particular day at approximately 9:10 p.m.

24 Q. Okay. What did you do after Judge Martens approved the
25 search warrant?

1 A. I contacted my lieutenant, advised him that we had received
2 the okay to execute the search warrant. We then proceeded to
3 6333 West Darnell Avenue where we executed the search warrant.

4 Q. Okay. And you when you got there did you notice that
5 something was wrong?

6 A. Yes, sir. As I was approaching the residence I normally
7 validate and verify the numbers of the address to the search
8 warrant and I noticed that there was a type error. The address
9 was 6333, and I had on the search warrant 6633.

10 Q. Okay. What did you do about that error?

11 A. I stopped, I notified my lieutenant, who then recommended we
12 call the judge which was Judge Martens. I called Judge Martens
13 and explained the typographical error. He instructed me to go
14 throughout the entire affidavit and search warrant, line through
15 the incorrect number 6, put the correct number of 3, and to
16 initial every correction. And I contacted the judge at 10:08
17 p.m., and he told me that was not a problem and he authorized me
18 to continue.

19 Q. Okay. And did you go through it and make those changes and
20 initial the changes?

21 A. Yes, sir.

22 Q. And is there a notation somewhere on your affidavit that you
23 talked to the judge and received his approval?

24 A. Yes, sir. On page 5 of 6, the last handwritten entry I
25 wrote in: "7-6-11, 10:08 p.m., authorized corrections of 6633

1 to 6333, Judge Martens."

2 MR. WALL: Okay. I have nothing else of this witness.

3 THE COURT: Ms. Boyle?

4 MR. BOYLE: Thank you.

5 CROSS-EXAMINATION

6 BY MR. BOYLE:

7 Q. Detective Gomez, your involvement in this case, did it start
8 on July 6th, or had you previously had some knowledge of this
9 matter?

10 A. I had some previous knowledge of this matter, yes.

11 Q. You are aware that there was a homicide of two people in --
12 somewhere between the dates of October 15th, 2007 and October
13 19th, 2007, correct?

14 A. Yes.

15 Q. So at the time that this was being -- I'm just stating the
16 obvious, it's about four years later when this search warrant is
17 being applied for and executed. You would agree with that.

18 A. Yes.

19 Q. Now, you're aware based upon your knowledge of the file and
20 the fact that on page -- on the affidavit in paragraph 4, you're
21 aware that there's an individual by the name of Todd Carter who
22 supplied information to law enforcement. Specifically, that
23 "Tyrone McMillian had to 'pop' the victims over an argument.
24 Todd Carter further related McMillian confessed the argument was
25 over a failed lease contract which involved a recording studio

1 at 5514 West Lisbon Avenue." Correct?

2 A. Yes, ma'am.

3 Q. Now, you're aware that the information from Todd Carter was
4 probably about a year old? Is that about right?

5 A. I was not aware of exactly when he had provided that info.

6 Q. Okay. Did you come to learn at any point in time that Todd
7 Carter's information was -- the interview that he supplied this
8 information was approximately a year old?

9 A. I could not truthfully answer that.

10 Q. All right. When you put the information from Todd Carter in
11 this affidavit, how did you acquire that information?

12 A. I acquired that from Detective Gulbrandson and other
13 detectives that were providing the information regarding this
14 particular informant.

15 Q. All right. You typed up the application which is the first
16 page of Exhibit Number 4, correct?

17 A. Yes.

18 Q. All right. In it, under paragraph 1, it says, "describe
19 premise," and there are -- it's a description of a residence,
20 and when you originally typed it you typed 6633 West Darnell
21 Avenue, correct?

22 A. Yes, ma'am.

23 Q. And he talks about it's a single-family located on the south
24 side, et cetera, and so forth, right?

25 A. Yes.

1 Q. Who gave you that information?

2 A. Detective Smith.

3 Q. All right. Did he also give you the address West Darnell?

4 A. Yes.

5 Q. Did you go and search -- you said that you did a little
6 review of the file. Did you search as to Mr. McMillian's
7 address at all? Or did you just rely on your memory of what
8 Detective Smith gave you?

9 A. I relied on the information Detective Smith gave me.

10 Q. All right. So did Detective Smith inadvertently give you
11 6633, or not? Or do you not know?

12 A. I would assume he gave me the correct address since he was
13 on scene, and I took the responsibility of the error upon
14 myself.

15 Q. Okay. And I understand that. But when you say you assume
16 that he gave you the right address, a potential exists that he
17 could have said 6633 and just misspoke and you wrote down what
18 he gave you. I mean, that exists as a possibility.

19 A. Sure.

20 Q. Sure. And it also exists as a possibility that you
21 inadvertently wrote down 6633 instead of what Detective Smith
22 gave you of 6333, correct?

23 A. Well, I know that more likely than not the error was my part
24 because when I reviewed the memos, those little memo Post-It
25 notes, I had the correct address on there.

1 Q. Where are the memo Post-It notes?

2 A. I threw them away when I finished the affidavit.

3 Q. Well, you reviewed some memo Post-It notes, right?

4 A. That I wrote that day, yes.

5 Q. Sure. And when did you review those?

6 A. The next morning.

7 Q. And did you at all make a copy of that to be able to put in
8 the report or into evidence to say this was just an inadvertent
9 mistake?

10 A. No.

11 Q. You went in the next morning, saw these Post-It notes and
12 said, oh, I guess I did have the right address, I just
13 inadvertently typographically transcribed it incorrectly.

14 A. Yes.

15 Q. So as you sit here, it's absolutely not possible that
16 Detective Smith gave you the wrong information, correct?

17 A. I didn't say that.

18 Q. Oh, so it is a possibility that he gave you the wrong
19 information.

20 A. It could have been.

21 Q. Okay. All right. So let's go on here. You make three
22 corrections on the front of this page to the correct address and
23 initial it, right?

24 A. Yes, ma'am.

25 Q. And that is done after -- well, strike that.

1 That is done when you are back on scene or when you
2 are on scene going to execute the search warrant. Right?

3 A. That is correct.

4 Q. All right. Now, let's look at Exhibit -- or, I'm sorry,
5 describe articles of search. It says, "E, Monies in large
6 quantities which constitute drug contraband" and "may" is
7 written there. Do you see that?

8 A. Yes.

9 Q. Who wrote that?

10 A. That was probably me.

11 Q. Well, "probably" doesn't help me out.

12 A. Then I'll say it was me.

13 Q. Okay. Do you remember writing that?

14 A. I believe I did write it, yes.

15 Q. Okay. So you do remember writing it.

16 A. Yes.

17 Q. When did you write that?

18 A. I couldn't tell you, ma'am.

19 Q. So you don't know if that "may" was written when you were at
20 Judge Martens' house or it was written after you got on scene?

21 Do you know?

22 A. It would not have been written after Judge Martens.

23 Q. So it was written sometime before.

24 A. Yes.

25 Q. Was it after Grant Huebner reviewed it, that being the DA?

1 A. I honestly couldn't tell you. I couldn't tell you that.

2 Q. All right. Now, you agree that also on page 1 of that
3 Exhibit Number 4, it says, "Describe crime or crimes," right?

4 A. Yes.

5 Q. And listed there is possession of a firearm by a felon
6 committed in violation of Section 941.29 subsection (1) and
7 subsection (b), correct?

8 A. Yes.

9 Q. That's the information you put in there, correct?

10 A. Yes.

11 Q. And you put that in there because Detective Smith gave you
12 information about the crime?

13 A. Yes.

14 Q. All right. Now, you know that possession of a firearm by a
15 felon means that a person has been convicted of a felony
16 somewhere in the United States that remains unreversed and is in
17 possession of a firearm, correct?

18 A. Yes.

19 Q. It's very simple language, you agree.

20 When you're typing this out, you, based upon your
21 affidavit, from what you learned from Detective Smith, know that
22 there was a gun found in that residence, correct?

23 A. Yes.

24 Q. Okay. So that's why when you typed up this affidavit and
25 the application for the search warrant, you put down "possession

1 of a firearm by a felon," because you had come to learn somehow
2 that Mr. McMillian was a felon, right?

3 A. Yes.

4 Q. And you had come to learn from Detective Smith that there
5 was a firearm in the residence.

6 A. Correct.

7 Q. Okay. Going on. We know on page 2 that Judge Martens
8 signed it about 10:10, and that's a p.m., right, on July 6?

9 A. 9:10 p.m.

10 Q. Oh, I'm sorry. 9:10 p.m. Correct?

11 A. Yes.

12 Q. Now let's talk about your affidavit. Paragraph 1 is your
13 background information which is accurate, correct?

14 A. Yes.

15 Q. All right. Now, number 2 says, "As a part of my duties I
16 have reviewed reports prepared in the normal ordinary course of
17 business of the City of Milwaukee Police Department related to
18 the homicide of the two victims," right?

19 A. Yes, ma'am.

20 Q. And you say, "I base this affidavit upon a review of said
21 reports/personal knowledge as a result of that investigation,"
22 yes?

23 A. Correct.

24 Q. All right. You identified in number 3 the homicides which,
25 again, had been about four years before this affidavit, right?

1 A. Correct.

2 Q. And then you talk about that Todd Carter information, yes?

3 A. Yes, ma'am.

4 Q. And that information that you put in there about Todd Carter
5 and what he said, you can't tell us, as you sit here today, when
6 that statement was given, right?

7 A. Correct.

8 Q. Detective Gulbrandson didn't say anything like "Todd Carter
9 just told us this," did he?

10 A. I couldn't tell you exactly what words were used, no.

11 Q. And you never reviewed the report of Todd Carter and his
12 interview, did you?

13 A. No.

14 Q. Okay. So, when you say that you reviewed said reports and
15 personal knowledge as a result of the investigation, that's
16 personal knowledge of Eric Gulbrandson or other detectives,
17 right?

18 A. That's personal knowledge based on the information they are
19 giving me.

20 Q. Sure. Now, let's go on to paragraph 5. You never talked to
21 Kenneth Walkowiak or Brian Shull, did you? In focusing your
22 attention just in the affidavit preparation.

23 A. Okay.

24 Q. So you never talked to them prior or when you were typing up
25 this affidavit, right?

1 A. No. I don't believe I did, no.

2 Q. Because, and correct me if I'm wrong, all of the information
3 that you learned in support of this affidavit from another human
4 being that was on scene was only from Detective Smith; is that
5 what I understand?

6 A. Well, some of the information he had received was from
7 Police Officers Ken Walkowiak and Brian Shull.

8 Q. Okay. So what you understood is Detective Smith was
9 relating information either from his own personal knowledge or
10 observations, or information that he received from Walkowiak or
11 Shull; is that what I understand?

12 A. Yes.

13 Q. Okay. So -- and for the record, you would agree that the
14 address is incorrect one, two -- three times in the affidavit;
15 is that right?

16 A. Yes.

17 Q. Okay. Now, we know it wasn't an arrest warrant, right?

18 A. Correct.

19 Q. You know it's a suspect card. At least you know that now.

20 A. Yeah.

21 Q. All right. Did Detective Smith tell you and use the words
22 "arrest warrant"?

23 A. Yes, ma'am.

24 Q. All right. You know based upon your knowledge and
25 experience that an arrest warrant is different than a suspect

1 card.

2 A. Correct.

3 Q. An arrest warrant is a warrant that may have been issued by
4 a judge to go and arrest a certain individual, right?

5 A. Yes.

6 Q. Or it could be -- I believe the DA's office might be able to
7 issue an arrest warrant if they issue a case, yes?

8 A. That's correct.

9 Q. A suspect card is not usually a card -- well, strike that.

10 A suspect card gets issued sometimes and, for the most
11 part, internally by the Milwaukee Police Department, hey, we
12 want to go and pick this person up for questioning?

13 A. Correct.

14 Q. And in this case you would agree that the words "arrest
15 warrant" were, at least as you sit here now, you know are
16 inaccurate because it was only a suspect card, correct?

17 A. Yes.

18 Q. All right. All right. Now, let's go on to paragraph 6.

19 Paragraph 6 says that, "The tactical unit gained entry
20 into the residence and arrested Mr. McMillian." That's the way
21 it starts out, do you agree? Not exactly the words.

22 A. Yes.

23 Q. That information was given to you -- that specific concept
24 was given to you by Detective Smith?

25 A. Yes, ma'am.

1 Q. All right. And he told you that the tac unit gained entry
2 into the residence and arrested Mr. McMillian in the residence,
3 correct?

4 A. Yes.

5 Q. You were also told that that was a residence occupied by
6 another individual.

7 A. I was told there was another, a person in there, later
8 identified as Ashley.

9 Q. You were informed that a protective sweep of the home was
10 done for other subjects, parentheses, confederates hiding in the
11 residence, correct?

12 A. Yes.

13 Q. And that came from Detective Smith?

14 A. Yes, ma'am.

15 Q. All right. And you were told by Detective Smith that an
16 Officer Jonathan Witkowski observed "a black in color AK-47
17 assault rifle underneath an air mattress." Did I read that
18 correctly?

19 A. It was not -- I put in air mattress but it was actually a
20 mattress, and if you notice, there's a correction there, a line
21 through there.

22 Q. Yes, I was going to get to that. Do you know when you made
23 that correction?

24 A. That would have been after I read the affidavit.

25 Q. Okay. So, do you know when you made the correction -- you

1 made it sometime before going to Judge Martens's house, right?

2 A. Yes, ma'am.

3 Q. Now, as far as you knew from what Detective Smith told you,
4 is that Officer Witkowski observed an AK-47 assault rifle in the
5 residence, yes?

6 A. Yes, ma'am.

7 Q. And your understanding from Detective Smith is that this was
8 something found underneath a mattress.

9 A. Correct.

10 Q. Did you come to learn that in fact there was an AK-47 found
11 in the residence?

12 A. Yes.

13 Q. Did you come to learn that the AK-47 was found in a black
14 gun case?

15 A. Yes.

16 Q. Did you come to learn that underneath the mattress was a
17 small handgun?

18 A. Yes.

19 Q. All right. Now, you know, do you not, because of what we
20 just went through, that the gun case that held the AK-47 --
21 well, strike that.

22 From your knowledge and experience of this case, if an
23 AK-47 assault rifle was found in the residence in a gun case,
24 and you were told that there was an AK-47 rifle found in the
25 residence, you would agree that somebody had to look in that gun

1 case in order to view the AK-47.

2 MR. WALL: Objection, speculation.

3 THE COURT: I will allow it. Just based on your
4 experience whether it would be true or not. And if you don't
5 know, you don't know.

6 THE WITNESS: Not necessarily, no. Based on my
7 experience. I have seen firearms in gun cases when they are
8 broken or ajar.

9 BY MR. BOYLE:

10 Q. Okay. Well, I'm going to show you what's been marked as
11 Exhibit Number 1. Have you ever seen this picture before?

12 A. Yes, ma'am.

13 Q. What is that?

14 A. That is the gun case we are currently talking about.

15 Q. Correct. That gun case, at least how it appears in the
16 paragraph, is not ajar, correct?

17 A. No, ma'am.

18 Q. Let's talk based upon your knowledge and experience. If an
19 officer writes a report that says they observed a black gun case
20 in a bedroom of a residence, and that officer does not say I
21 looked in it, I examined what was in it, I saw what was in it,
22 correct? I'm asking you to accept that.

23 A. Well, I'm kind of -- you said -- an officer said I looked in
24 it --

25 Q. Well, I'll strike the question. I'm going to ask it this

1 way.

2 You were told, were you not, by Detective Smith that
3 there was an AK-47 assault rifle found in that residence which
4 is what you put in your affidavit, correct?

5 A. Yes, ma'am.

6 Q. Based upon your knowledge and experience of what you learned
7 from Detective Smith, did you form a belief as to whether or not
8 an officer from the City of Milwaukee Police Department viewed
9 an AK-47 assault rifle in that residence?

10 MR. WALL: Judge, I'm going to object on relevance.
11 It has to do with the protective sweep and we've conceded the
12 protective sweep was illegal. So I'm not sure what it goes to.
13 The Court has already ruled on the Franks issue. So, maybe
14 Ms. Boyle can just proffer the relevance?

15 MR. BOYLE: I'm sorry, did Mr. Wall say the Court's
16 ruled on the Franks issue?

17 THE COURT: Yes.

18 MR. BOYLE: When did we get that ruling?

19 MR. WALL: Wednesday.

20 MR. BOYLE: Last week Wednesday?

21 MR. WALL: Yes.

22 MR. BOYLE: Oh, I have to be honest, I did not see
23 that ruling. I'm going to guess the Court denied the Franks
24 issue.

25 THE COURT: That is correct. But, Ms. Boyle, as to

1 your question, the relevance to the question to answer
2 Mr. Wall's objection?

3 MR. BOYLE: Well, I think it goes to the validity of
4 what is told to this officer, what he writes down in the
5 affidavit, what he goes to get a judge to sign, and the changes
6 that are made. If the Court denied the request for a Franks
7 hearing then I think it is probably an irrelevant question.
8 But --

9 THE COURT: It is correct. That request was denied,
10 Ms. Boyle. But Detective Gomez has already testified that the
11 information about the AK-47 he did receive from Officer Smith.

12 MR. BOYLE: I'll move on.

13 BY MR. BOYLE:

14 Q. The other information contained in there with the HK
15 displayed, you, again, got that from Detective Smith, correct?

16 A. I'm sorry, ma'am, what was the question?

17 Q. The HK displayed on the front of the gun case, that came
18 from Detective Smith.

19 A. Yes.

20 Q. All right. Now, in paragraph 8, you have stated, "I have
21 probable cause to believe McMillian is in violation of Wisconsin
22 state statute," and you've identified, again, the felon in
23 possession of a firearm statute.

24 A. Yes.

25 Q. You would agree that does not say 940.01.

1 A. Unfortunately, yes, I'll agree.

2 Q. And 940.01 is?

3 A. The state statute for homicide.

4 Q. First degree intentional, right?

5 A. Yes, ma'am.

6 Q. Now, Mr. Wall asked you about recording equipment taken in
7 the burglary days before the homicide, right?

8 A. Yes, ma'am.

9 Q. That has nothing to do with felon in possession of a
10 firearm.

11 A. No.

12 Q. The cell phones, you talked about pictures of the homicide
13 investigation. Or pictures that might have been taken on a cell
14 phone, correct?

15 A. Yes.

16 Q. That has nothing to do with felon in possession, right?

17 A. It could.

18 Q. Okay. Well, did you write it down for the purpose of felon
19 in possession of a firearm or did you write it down for purposes
20 of the homicide investigation?

21 A. Well, my primary intent was for the homicide.

22 Q. Right. And that's why you were involved was -- the primary
23 intent was to focus on the homicide, not the felon in possession
24 of a firearm case. I mean, that was the primary intent as to
25 why you were involved.

1 A. Correct.

2 Q. And that would be the same for all A through G. All deals
3 basically -- with the exception of firearms, ammunition, gun
4 case, basically deals with the focus of the homicide, yes?

5 A. Well, not necessarily, ma'am. I think the omitting of the
6 940.01, first degree intentional homicide charge, was obviously
7 a gross error on my part. When I'm playing with these computers
8 and they're filling in the spaces, I didn't catch that it didn't
9 include the homicide charge.

10 MR. BOYLE: Mr. Reporter, can I have my question read
11 back for the detective?

12 (Record read.)

13 THE WITNESS: Then I'll answer yes.

14 BY MR. BOYLE:

15 Q. You would also agree -- if you, again, reference the first
16 page of Exhibit 4, describe crime or crimes, is possession of a
17 firearm by a felon and not anything about the homicide. You
18 would agree with that, would you not?

19 A. Yes, ma'am.

20 Q. All right. Now, I want to ask you, after you typed this up,
21 you told us at least you recall making one correction, "air
22 mattress," you changed that, yes?

23 A. Yes, ma'am.

24 Q. And then I thought you said you showed it to your lieutenant
25 and he notarized it?

1 A. Yes.

2 Q. All right. So when -- just so I know, when do you sign off
3 on it?

4 A. When he swears me in.

5 Q. Okay. And that's done -- that was done at the police
6 station?

7 A. Yes.

8 Q. When does Grant Huebner review it?

9 A. He reviews it after the lieutenant notarized it.

10 Q. All right. So you swear -- he puts you under oath, correct?

11 A. Yes.

12 Q. As a notary he's required to ensure by affirmation that you
13 are swearing to the truth of the contents of the affidavit.

14 A. Correct.

15 Q. So in paragraph 11, where it says this affiant -- or the
16 affidavit was reviewed by Assistant District Attorney Grant
17 Huebner on July 6, 2011, that occurs after you swear to it?

18 A. No. We supply Grant Huebner -- in fact, I believe he came
19 in that day, he says it's all good. Then the lieutenant signs
20 it. I stand corrected.

21 Q. Okay.

22 A. Then he notarizes it. That's what it is.

23 Q. Then what you do is you travel to Kevin Martens' home,
24 correct?

25 A. Yes.

1 Q. And he -- what does he do? Tell us what he does. Does he
2 take it, does he review it? What does he do?

3 A. He sits there, reviews the entire document. If he has any
4 questions he asks. Normally he'll review it. If he's got any
5 problems with it he'll tell us to fix it. Then I'll have to
6 return. Unfortunately we don't have laptops. And if it gets
7 too late he may ask us to e-mail it. But this was not the case.
8 He looked it over and he said it was good to go, and we went
9 from there. He signed it.

10 Q. Do you have any knowledge of whether or not any other member
11 of the police department attempted to get a search warrant for
12 this residence prior to your getting it?

13 A. No.

14 Q. And this was the only document -- this affidavit and
15 application were the only documents that went to a judge by you.
16 In other words, there wasn't another copy or a draft that went
17 somewhere?

18 A. Not to my knowledge, no.

19 Q. Now, you have told us that when you signed before your
20 lieutenant, the affidavit that you were signing to, signing
21 under oath, you believed was accurate and correct. Correct?

22 A. Correct.

23 Q. You reviewed the document to ensure that it was accurate as
24 far as what you knew?

25 A. Yes.

1 Q. You verified -- Strike that.

2 When you signed under oath you had a belief, based
3 upon your affidavit and upon the review of the affidavit, that
4 the address you ultimately would be going to would be 6633 West
5 Darnell, did you not?

6 A. No.

7 Q. Okay. Why not?

8 A. I knew it to be 6333 West Darnell.

9 Q. So when you signed off on the affidavit you swore under oath
10 that the information that was contained in the affidavit was
11 true and correct. You would agree with that statement.

12 A. Absolutely.

13 Q. You indicate that you have reviewed the document, yes?

14 A. Yes.

15 MR. WALL: Judge, again, I object. It's all been
16 asked and answered. And I don't see the relevance in light of
17 the court's ruling as well as the concession from the government
18 on the protective sweep.

19 MR. BOYLE: I forgot that you already ruled on that.
20 I'll withdraw the question.

21 BY MR. BOYLE:

22 Q. You would agree, Officer, that paragraph 6 is the only
23 paragraph in regards to information learned about the inside of
24 that residence on July 6, 2011. In other words, that's the only
25 information dealing with the inside of the residence. You agree

1 with that.

2 A. As far as evidence or --

3 Q. Yes.

4 A. Yes.

5 Q. Evidence. The only other information that is in there is
6 the -- regarding the homicides -- and I'm not talking about the
7 date of the homicide or the actual homicide and the names of the
8 victims -- but is from the informant Todd Carter which is
9 contained in paragraph 4, correct?

10 A. I don't understand your question.

11 Q. Well, tell me the paragraphs that deal with the homicide.

12 A. Well, you'd have paragraph 2.

13 Q. Yup.

14 A. Which lists the victims.

15 Q. Yes.

16 A. You have paragraph 3.

17 Q. Yup.

18 A. Which is the date and location. Venue.

19 Q. Correct.

20 A. You have paragraph 4, like you mentioned, the informant.
21 And he annotates that your client, or Tyrone McMillian,
22 confessed that he had basically taken part in killing the
23 victims.

24 Q. Well, you would agree that it says that McMillian -- this is
25 what Todd Carter is relating -- related he had to pop the

1 victims, meaning a future event? Do you agree with that as to
2 the language that's written in the affidavit?

3 A. Popped, yes.

4 Q. In a future statement. "I'm going to pop them in the
5 future."

6 MR. WALL: Objection.

7 MR. BOYLE: Well, it's his words.

8 BY MR. BOYLE:

9 Q. What does it mean? Why did you write "who related he had to
10 pop the victims"?

11 THE COURT: I'm sorry, could you repeat the question?

12 MR. BOYLE: Sure.

13 BY MR. BOYLE:

14 Q. It says, "HK, who related he had to pop the victims over and
15 argument." Did I read that correctly?

16 A. Yes.

17 Q. It does not say he had already popped the victims. Meaning
18 he had done it already and was explaining to Mr. Carter.

19 A. I would assume that "had to" meant he had.

20 Q. Had what?

21 A. Had popped the victims.

22 Q. Okay. And then it says, "Carter further related McMillian
23 confessed the argument over a failed lease contract." Yes?

24 A. Yes.

25 Q. Now, that is the only paragraph that has any tie to

1 Mr. McMillian with these homicides, correct?

2 A. Yes.

3 Q. Oh, so after -- oh, wait, I think that's getting into the
4 Franks issue, isn't it.

5 I don't think I have anything further. And I
6 apologize, Judge. I did not see the decision come through. I
7 don't have any idea why I didn't. So --

8 THE COURT: Anything further, Mr. Wall?

9 MR. WALL: Yes, just one question, area.

10 REDIRECT EXAMINATION

11 BY MR. WALL:

12 Q. Detective Gomez, Ms. Boyle had you go through paragraph 8
13 and read through the statutory section there, felon in
14 possession of a firearm. You stated that "I made a gross error
15 in failing to include the homicide statute." Could you just
16 quietly read to yourself paragraph 9?

17 (Witness peruses document.)

18 A. Yes, sir.

19 BY MR. WALL:

20 Q. Did you include the homicide as part of the probable cause
21 of the affidavit?

22 A. Yes, in paragraph 9.

23 Q. Do you take it back that you made a gross error?

24 MR. BOYLE: Well, I'm going to object to the form of
25 that question. That's extremely leading.

1 MR. WALL: He can say yes or no. It's not leading.

2 I'll ask a different question anyway.

3 BY MR. WALL:

4 Q. Is this a dual-purpose affidavit?

5 A. Yes, sir.

6 Q. For which crimes?

7 A. For felon in possession of a firearm, 941.29, and for
8 homicide, 940.01.

9 MR. WALL: Thank you. Nothing else.

10 RECROSS-EXAMINATION

11 BY MR. BOYLE:

12 Q. But you would agree that the only reference to the homicide
13 is found at the last listing of numbers in paragraph 9, correct?

14 A. That is correct.

15 Q. And in paragraph 8 it's, "I want to search for these
16 proceeds for the crime of felon in possession of firearm,"
17 correct?

18 A. Yes, ma'am.

19 Q. And you would also agree on the first page that it doesn't
20 list describe -- under "describe crime or crimes" possession of
21 a firearm by a felon and two counts of first degree intentional
22 homicide. You would agree with that.

23 A. Yes.

24 MR. BOYLE: Nothing further.

25 MR. WALL: Nothing else.

1 THE COURT: Mr. Wall?

2 MR. WALL: Nothing else.

3 EXAMINATION

4 BY THE COURT:

5 Q. Detective Gomez, I have a question. I am now confused
6 regarding paragraph 4 in the affidavit. The source of that
7 information. Did you testify that it was from your review of
8 the file or from what was conveyed to you by Officer Smith?

9 A. It was information which I reviewed from the suspect card
10 are probable cause and information that Detective Gulbrandson
11 had provided to me, ma'am. Not Detective Smith.

12 THE COURT: Any follow-ups from that question?

13 FURTHER REDIRECT EXAMINATION

14 BY MR. WALL:

15 Q. This may be in the record, but Gulbrandson was personally
16 involved in the investigation of the homicide?

17 A. Yes, sir.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. BOYLE:

20 Q. Did you have a chance to review the probable cause statement
21 and judicial determination regarding Mr. McMillian and the two
22 counts of homicide and two counts of felon in possession of a
23 firearm that was written by Detective Marco Salaam, S A L A A M?
24 Did you have a chance ever to review that probable cause
25 determination?

1 MR. WALL: Question on the form. Question, what's the
2 date of that? Was that after the affidavit or before?

3 MR. BOYLE: It was -- I'm sorry?

4 MR. WALL: Was that report by Detective Salaam -- I
5 think it's S A L A A M -- written after or before the date of
6 this affidavit?

7 MR. BOYLE: It was after. It's the --

8 MR. WALL: Object to relevance.

9 MR. BOYLE: Well, because I want to ask him if it
10 helps refresh his recollection as to when Todd Carter gave his
11 statement based upon his review of the file.

12 MR. WALL: Something written after wouldn't do that.

13 THE COURT: Well, the relevant time here is what
14 information he had or knew at the time of writing of the
15 affidavit. So if your question relates to that.

16 MR. BOYLE: It does.

17 THE COURT: At the time of writing the affidavit?

18 MR. BOYLE: Well, here's what I want to know.

19 BY MR. BOYLE:

20 Q. Did you review the statement -- you told us, because the
21 judge just asked you, the information in paragraph 4 came from
22 where? The review of the file, is that right? And information
23 you learned from Detective Gulbrandson.

24 A. Correct.

25 Q. All right. When you reviewed the file, do you recall that

1 April 30th, 2009, Todd Carter supplied the information that is
2 in paragraph 4 of the affidavit that you submitted to Judge
3 Martens?

4 MR. WALL: Objection. We don't know the date. I
5 don't know what she's reading. She's reading hearsay. I don't
6 know where it's coming from. I don't know when it was written.
7 None of us know that.

8 MR. BOYLE: All right. I'm going to ask that this be
9 marked.

10 MR. WALL: If it was written after -- can I see it?

11 MR. BOYLE: Sure.

12 (Counsel peruses document.)

13 MR. WALL: I would object. This was written on July
14 7th of 2011 by a different police officer. It would not have
15 been in the file that Detective Gomez reviewed on July 6th. It
16 was drafted the day after.

17 MR. BOYLE: I'm aware of that. I am only asking if
18 this officer has ever reviewed it while it's been in the file to
19 help refresh his recollection of the date of when Todd Carter
20 supplied the information to law enforcement.

21 And the reason that I want the date into the record of
22 when Todd Carter supplied the information is as an offer of
23 proof. Todd Carter supplied that information about a year
24 before the search warrant was executed. And if Milwaukee police
25 is going to a residence to search for information -- if we

1 assume that the gun cases -- I don't know how the court is going
2 to rule -- but if we get rid of paragraph 5 of the affidavit, we
3 now have to examine whether or not there was enough to get into
4 the residence under the search warrant.

5 MR. WALL: First of all, the report is rank hearsay.
6 She can't get the report in. You can't get any of the
7 information into evidence because it's all hearsay.

8 Second of all, she can't refresh anybody's memory of
9 what they did on July 6th with a report that was written on July
10 7th. She's trying to get into evidence through two or three
11 different backdoors something that's inadmissible and could not
12 have been reviewed by this witness. Either this witness knows
13 the date or doesn't know the date and she's stuck with that.

14 THE COURT: Well, if I may here. Well, as we already
15 established, both counsel, that the rules of evidence do not
16 apply, but we must still have some reliable information.

17 So, Ms. Boyle, the relevant time is of the writing of
18 the affidavit. So if you could backtrack with some foundational
19 questions regarding the timeframe of the information that's in
20 paragraph 4.

21 MR. BOYLE: Sure.

22 BY MR. BOYLE:

23 Q. As you sit here today, you have a recollection that prior to
24 typing up the affidavit you reviewed the M file regarding the
25 homicides, correct?

1 A. I reviewed pieces of the M file, yes, sir.

2 Q. You are aware, based upon your review of the M file and
3 based upon what you put in the affidavit, that Todd Carter was
4 the lynchpin connecting Mr. McMillian to these homicides at the
5 time of the writing of the affidavit, correct?

6 A. Yes.

7 Q. All right. So that is why the only information connecting
8 Mr. McMillian -- the only information connecting Mr. McMillian
9 to the homicides is contained in paragraph 4 which is
10 information that Todd Carter supplied to law enforcement,
11 correct?

12 A. That I am aware of, yes.

13 Q. Yes. Now, you did review Todd Carter's statement prior to
14 doing the affidavit.

15 A. No.

16 Q. You never looked at Todd Carter's statement.

17 A. I did not have that statement.

18 Q. Did you ask when Todd Carter gave that information?

19 A. No. The information that I had was from Detective
20 Gulbrandson who was relaying that information to me based on his
21 knowledge and his reading the reports that he had in hand.

22 Q. So the information that's contained in paragraph 4, you have
23 no idea if it was supplied to law enforcement on July 5th, 2011?

24 A. No, I do not.

25 Q. You have no idea if it was supplied on April 30th, 2009.

1 A. No, I do not.

2 Q. And, as you sit here today, do you know the answers to
3 whether or not it was supplied on July 5th, 2011 or April 30th,
4 2009?

5 A. No, I do not.

6 Q. And did it come to at all your mind that you needed or
7 should or would like to put a date of when Mr. Carter put that
8 information to law enforcement?

9 A. Sitting here now, yeah, I would say yes.

10 Q. You agree, do you not, that evidence in a homicide --
11 certainly, you know, you mentioned as an example that clothing
12 in a homicide, sometimes there's biological DNA that could be
13 obtained if you're able to seize clothes, correct?

14 A. Yes.

15 Q. So you would agree that over the course of time from 2007 to
16 2011 that evidence can disappear? Yes?

17 A. It could.

18 Q. Okay.

19 I have nothing further.

20 MR. WALL: Nothing else, Your Honor.

21 THE COURT: Thank you, Detective Gomez. You may step
22 down.

23 THE WITNESS: Thank you.

24 (Witness excused at 3:52 p.m.)

25 THE COURT: Mr. Wall, any other witnesses?

1 MR. WALL: No, Your Honor, not on the issues that were
2 presented to the court. Now there appears to be attack on the
3 probable cause of the search warrant which was not raised in the
4 opening briefs and was not presented to this court in our issues
5 for the court. Maybe that's -- maybe it's not an issue and
6 maybe it goes more to the overall accuracy of the warrant, I'm
7 not sure. But I'm a little confused now if we've, through this
8 questioning, expanded the issues that are going to have to be
9 briefed. Maybe Ms. Boyle can talk about that.

10 The issues that I think are open to the court are the
11 two -- hang on one second.

12 (Brief pause.)

13 MR. WALL: Just to clarify.

14 THE COURT: Take your time.

15 MR. WALL: Protective sweep is off the table. We've
16 conceded that and stated it needs to be stricken from the
17 affidavit.

18 Questions for the court for this hearing are whether
19 the two gun cases were appropriately observed. And that's
20 relevant only because it finds its way into the search warrant.

21 And then we have questions of whether -- if those gun
22 cases were inappropriately observed, whether the remainder of
23 the affidavit and search warrant provides probable cause for the
24 homicide aspect of the search.

25 And then if, in any event, one or two, we go back to

1 the original motions Ms. Boyle filed which has to do -- and
2 she's gone over that today well -- just the judicial correction
3 of the address, the three mistakes in the affidavit which we've
4 covered with testimony here today, and, as I say, the Court's
5 ruled on the Franks hearing. So really we have just those four
6 issues, as I understand it, for the Court's consideration. And
7 I understood that was the purpose of the hearing.

8 MR. BOYLE: I'm sorry, Mr. Wall, I missed, what did
9 you say I'm doing now that --

10 MR. WALL: I was going to ask if you could clarify
11 whether you are adding a new issue, and that is whether there is
12 probable cause in the search warrant affidavit to search for
13 evidence of the homicide. Because that issue was not raised in
14 any formal way but -- questions.

15 MR. BOYLE: I will tell you, just so the Court knows,
16 that this has been somewhat of a frustrating case for me because
17 there is such limited information in the police reports. There
18 were a number of different divisions of the Milwaukee Police
19 Department that were involved in it. And so, to cross-reference
20 all of this and to try to guess what might come out of the
21 mouths of witnesses on the witness stand is always a difficult
22 process.

23 I believed that when Detective Gomez came into this
24 courtroom that he was not going to say this was a dual
25 affidavit. I really thought that he was going to say, you know,

1 this is kind of standard language that we put in here regarding
2 the homicide -- or, I'm sorry, you know, in paragraph 8. And
3 that's what I kind of expected him to say. And now I find out
4 that it really was a dual purpose search warrant, to wit, we
5 were asking for a search warrant for the homicide, we believe we
6 had enough probable cause to do that, and we believe we had
7 enough probable cause based upon our observations for the gun
8 cases.

9 So, I guess, to answer Mr. Wall's question, based upon
10 the testimony I think there probably is another issue; however,
11 I think that the first issue goes to the gun cases in the
12 bedroom. Because if the gun cases in the bedroom remain, I
13 guess, in the affidavit, I don't know if the issues on the
14 probable cause and the dual purpose are really anything major.
15 If the gun cases then are excluded out of the affidavit, then I
16 think we got an issue properly identified by Mr. Wall and what
17 I've stated based upon the testimony.

18 MR. WALL: But, again, my response would be paragraph
19 9 tells you specifically it's dual purpose that there's probable
20 cause to believe there's evidence of felon in possession and
21 there's belief that these same items are evidence of a crime of
22 homicide. I mean, it couldn't be any clearer, paragraphs 8 and
23 9, as well as Gomez's testimony, that paragraphs 1 through 5
24 were specifically and only relating to the homicide, and he
25 added 6 and 7 for the gun. But, I mean, by its very wording

1 it's looking for evidence of both.

2 MR. BOYLE: Well, by its wording that may be, but when
3 you apply and have a judge sign off on saying we're looking for
4 the crime of felon in possession of a firearm, and I will also
5 state for the record that any person reviewing this affidavit
6 and application for a search warrant with all of the mistakes,
7 cross-outs, inserts in this affidavit, it would not cause a
8 person to make the leap of it's just a sloppy search warrant and
9 application that was done.

10 So, that's why I indicate that it was a little
11 surprising when the main focus seems to be felon in possession,
12 and the information in paragraphs 1 through 4 only appear to be
13 in there as kind of background information, not, oh, we're now
14 gonna ask a court to issue a warrant, search warrant for a
15 residence based upon our homicide.

16 There is no date in here. We certainly know in this
17 business and based upon case law is that you can't get a search
18 warrant for a homicide that occurred four years before without
19 something more than just the guy told me he had to pop the
20 victims over an argument. There has to be some greater causal
21 connection to go into somebody's residence on very dated
22 information. Unless there's an exception I'm missing.

23 THE COURT: Ms. Boyle and Mr. Wall, I take it neither
24 of you want me to rule here this afternoon based on your oral
25 presentations; that you want an opportunity to submit something

1 in writing as to what you identify as the appropriate issues
2 based on the pleadings and also from the testimony this
3 afternoon; is that correct?

4 MR. BOYLE: Yes.

5 THE COURT: And how do you wish to proceed? Do you
6 want to do simultaneous briefings or do you want to proceed in
7 the usual course where the government -- well, the movant goes
8 first and the government gets to reply?

9 MR. WALL: The second way. The way we did it the
10 first round before new issues were discovered.

11 Bridget might have a witness.

12 THE COURT: I'm sorry.

13 MR. BOYLE: I might.

14 THE COURT: The government has rested. Ms. Boyle, do
15 you have a witness?

16 MR. BOYLE: I want to talk to my client briefly, if I
17 can, to see whether or not we need her.

18 THE COURT: Why don't we take a quick recess and you
19 let us know when you're ready.

20 MR. BOYLE: Okay.

21 (Recess taken at 5:00 p.m., until 5:05 p.m.)

22 THE COURT: Please be seated.

23 We are back on the record in this matter.

24 Ms. Boyle?

25 MR. BOYLE: I'm going to call Ashley Kneuppel to the

1 witness stand.

2 THE COURT: You may proceed.

3 THE CLERK: Please raise your right hand.

4 ASHLEY KNEUPPEL, DEFENSE WITNESS, DULY SWORN

5 THE CLERK: Okay, please be seated. Please state your
6 full name and spell your last name for the record.

7 THE WITNESS: Yes, Ashley Kneuppel. Last name is
8 K N U E P P E L.

9 THE COURT: And before you begin, Ms. Boyle, there's
10 another individual in the courtroom; do you intend to call her
11 as a witness?

12 MR. BOYLE: I do not.

13 THE COURT: Okay. You may proceed.

14 DIRECT EXAMINATION

15 BY MR. BOYLE:

16 Q. Do you know Tyrone McMillian?

17 A. Yes.

18 Q. And how do you know him?

19 A. He's my boyfriend.

20 Q. And how long have the two of you been dating?

21 A. About 2 1/2 years.

22 Q. And on July 6, 2011, where did you reside?

23 A. 6333 West Darnell Avenue.

24 Q. And who did you reside with?

25 A. Tyrone.

1 Q. On that date did anything happen?

2 A. Yes.

3 Q. And tell me what happened sometime in the afternoon on that
4 date.

5 A. Him and I were in the bedroom. I get a knock at the door.
6 I go to the door. I realize it was Milwaukee police. Told me
7 to step outside. They asked if anybody else was in the house.
8 I said yes. They asked who. I said my boyfriend Tyrone. And
9 then that's when I was -- I stepped outside.

10 Q. Okay. Now, you stepped outside. Where do you generally go?

11 A. The driveway.

12 Q. And is anyone with you when you go to the driveway? In
13 other words, you're not handcuffed, correct?

14 A. Correct.

15 Q. And you get -- does somebody escort you there?

16 A. Yes.

17 Q. Okay. And who is that?

18 A. I don't know his name but I remember his face.

19 Q. Was it a police officer?

20 A. Yes.

21 Q. Uniformed?

22 A. Yes.

23 Q. Okay. Now, at some point in time does Tyrone come out of
24 the house?

25 A. Yes.

1 Q. All right. Tell us just briefly how that occurred.

2 A. When I came to the door they had the screen door open, they
3 told me to step outside. That's when they asked me who was in
4 the house. I said Tyrone. Couple seconds later he came
5 outside. And then he was arrested and taken I don't know where.

6 Q. He went somewhere and you don't know.

7 A. Right.

8 Q. Okay. Now, do you -- how many officers are there, if you
9 can guess, when you open the door?

10 A. Roughly between 10 and 12.

11 Q. Okay. After you see Tyrone come out, do you see him get
12 handcuffed?

13 A. Yes.

14 Q. And then he's taken somewhere that you don't know.

15 A. Correct.

16 Q. Do you see while this is going on -- what are the officers
17 doing? Are they standing around, are they going in the house?
18 What are they doing?

19 A. After I'm in the driveway somebody's holding my arm, a
20 police officer, and then I see a bunch of people go inside the
21 house.

22 Q. And how many did you see go inside the house?

23 A. I don't know. Five, six, seven maybe. Somewhere around
24 there.

25 Q. And at some point in time do you see them all come out, or

1 no?

2 A. I see people come out. I don't know if there was people
3 still in the house. I see people come out.

4 Q. Do you know an Officer Brian Shull?

5 A. Yes.

6 Q. And you saw him in the hallway here today.

7 A. Correct.

8 Q. At any point in time did you have contact with him while you
9 were on the driveway?

10 A. Yes.

11 Q. Okay. Tell me -- now, just so I'm clear, Tyrone gets
12 arrested or handcuffed and taken away, right?

13 A. Right.

14 Q. You're still on the driveway and you saw Officers go into
15 your residence, correct?

16 A. Correct.

17 Q. And at any point in time do you go into the residence?

18 A. No.

19 Q. And we're talking about the protective sweep, right?

20 A. Yes.

21 Q. At any point in time after the sweep do you go into the
22 residence?

23 A. No.

24 Q. Do you go into the residence with Officer Brian Shull?

25 A. Yes, I do.

1 Q. So you do go in the residence.

2 A. Oh, yes. Yes. It was about 15 minutes -- I had been
3 standing outside for maybe about 15 minutes before I went back
4 inside the house.

5 Q. So during that 15 minutes you don't go in the house.

6 A. I do not.

7 Q. What causes you to go in the house with Officer Brian Shull?

8 A. He comes up to me while I'm in the driveway and tells me
9 that he needs to get Tyrone's flip flops from inside the house.

10 Q. Okay.

11 A. So then I'm taken into the house.

12 Q. Okay. Do you say, okay, I'll take you and we'll go in
13 together?

14 A. No.

15 Q. Do you -- does Officer Brian Shull say I need your
16 permission to go in the house?

17 A. Absolutely not.

18 Q. Do you say you can just go in there and look around for
19 yourself?

20 A. No, I do not say that.

21 Q. And so he comes up, he says we need to get his flip flops,
22 and you -- did you respond by saying sure, I'll show you around?

23 A. No.

24 Q. You made no verbal response to him.

25 A. No.

1 Q. Like okay, go ahead?

2 A. No.

3 Q. Did you make any shaking your head up and down, yes, go
4 ahead?

5 A. No.

6 Q. Did you at all consent to allowing Brian Shull in the house?

7 A. No. I was never even asked for consent.

8 Q. Okay. When you went with him into the house was there
9 anyone in the house when you arrived?

10 A. There was somebody else inside the house and he was walking
11 from one of the bedrooms. He was coming down the hallway.

12 Q. And you took -- Strike that.

13 When you entered the house with Officer Shull where
14 did you go?

15 A. We walked to my bedroom.

16 Q. And when you were in the bedroom what happened?

17 A. I walked him to the side of the bed to get his flip flops.

18 Q. And was anything said?

19 A. He was bending down to pick up the flip flops and he pointed
20 to some cases and said, "What are these?" I said, "I don't
21 know." And he said, "They look like gun cases to me."

22 Q. And what happened after that?

23 A. He told me to sit down in our front living room and I had to
24 sit there.

25 Q. Did you stay in the living room for a period of time?

1 A. Yes.

2 Q. Did you think that you could get up and walk around your
3 house?

4 A. No.

5 MR. BOYLE: I don't think I have anything else.

6 CROSS-EXAMINATION

7 BY MR. WALL:

8 Q. Ms. Kneuppel, do you recall Officer Shull asking you do you
9 know where Tyrone's Air Jordan flip flops are that he wants?

10 A. I know he came up to me and said, "We need to get his flip
11 flops."

12 Q. Do you recall him asking you do you know where they are?

13 A. He either -- probably. He said -- probably he said that.
14 And then I was either like they're by right -- right by the door
15 or they're in our room.

16 Q. Okay. And then on your own, after he asked that, you
17 started walking into the house?

18 MR. BOYLE: Well, I'm going to object to the form of
19 the question.

20 BY MR. WALL:

21 Q. After he asked that question did you then start walking into
22 the house?

23 A. I started walking to the house after him. I was following
24 him.

25 Q. And where was he going?

1 A. We were by the door where all the shoes are. And then I
2 said, "No, they're not here." So then that's when we walked to
3 the bedroom.

4 Q. You walked him to the bedroom.

5 A. I didn't walk him to the bedroom.

6 Q. Did he walk to the bedroom by himself?

7 A. No. I was behind him. We walked to the master bedroom.

8 Q. But you told him they were in the bedroom.

9 A. Right. I said, "If they're not here they're in the
10 bedroom."

11 Q. If they're not where?

12 A. If they're not by the door.

13 Q. You love Tyrone McMillian, don't you?

14 MR. BOYLE: I'm going object.

15 MR. WALL: Bias. It's always admissible.

16 BY MR. WALL:

17 Q. You love Tyrone McMillian --

18 THE COURT: That's admissible, go ahead.

19 BY MR. WALL:

20 Q. -- very much, don't you?

21 A. Yes.

22 Q. You're pregnant with his child.

23 A. Yes.

24 MR. WALL: Judge, I ask -- ask a series of questions
25 under 608(b).

1 BY MR. WALL:

2 Q. After retrieving the Air Jordan flip flops, did you have an
3 interview with a Detective Gomez in the house?

4 A. No, he wasn't there.

5 Q. He never interviewed you in the house?

6 A. No. He didn't come until the actual copy of the search
7 warrant came which was about 9:30, 10:00 o'clock.

8 Q. So you did have an interview with him in the house.

9 A. He didn't sit me down and interview me and ask me all kinds
10 of questions.

11 Q. Okay. Did you have an interview with him in the house?

12 A. (No response.)

13 Q. I'm not asking if he asked you all kinds of questions, I'm
14 asking did he ask you any questions while you --

15 A. Yes, he did ask me questions.

16 Q. Okay. And did you tell him that you had no knowledge of any
17 firearms in the residence and you had not touched, seen or
18 purchased any firearms?

19 A. Yes.

20 Q. Was that true when you told him that?

21 A. Yes.

22 Q. That you had never seen any firearms in the house?

23 A. Yes.

24 Q. And that you had never touched any firearms in the house?

25 A. Yes.

1 Q. Do you recall him asking you to provide a DNA sample?

2 A. I do.

3 Q. And you said that you would?

4 A. Yes.

5 Q. Did you then apologize to him and say that you, in fact, had
6 seen and touched a black semiautomatic handgun?

7 A. I didn't apologize. I had said I remember seeing a black
8 gun, but I was referring to guns that Tyrone's son plays with.
9 I never apologized and said I'm sorry, you know, I remember
10 seeing -- I never described a semiautomatic gun. I didn't say
11 anything like that.

12 Q. And was that the gun that you told the officer that
13 Mr. McMillian was cleaning in your bedroom two months previous?

14 A. I don't remember -- I mean, he didn't describe a gun to me.
15 I said what I seen. I don't --

16 Q. Okay. Well, let's take a step back and I'll ask that
17 question again. Did you tell him that Tyrone was cleaning a gun
18 in your bedroom and that you then touched the gun?

19 A. I said I remember him cleaning a gun and I touched it, but
20 it wasn't real.

21 Q. So he was cleaning a BB gun is your testimony.

22 A. Whatever gun. There's all kinds of guns in the house that
23 are play guns.

24 Q. All kinds of guns in the house that were play guns.

25 A. Yeah.

1 Q. And were all those guns in the house at the time of the
2 search warrant?

3 A. The play guns.

4 MR. WALL: Okay. I have nothing else.

5 REDIRECT EXAMINATION

6 BY MR. BOYLE:

7 Q. For the record, Detective Gomez's report indicates that when
8 you told him -- at least this is what his report says -- that
9 you "touched the gun when Tyrone was cleaning the gun in her
10 bedroom. Ashley stated the incident occurred about two months
11 ago." That's what his report reads.

12 A. Right. I said roughly. I don't remember --

13 Q. Now, you do love Mr. McMillian, correct?

14 A. Yes.

15 Q. Can you tell me -- out of all the police officers that were
16 there on that day, can you tell me who was the police officer
17 that treated you the nicest?

18 A. Officer Shull.

19 Q. And Officer Shull is the one that you walked behind going to
20 the bedroom?

21 A. Correct.

22 Q. Officer Shull, did he treat you with dignity and respect?

23 A. Yes.

24 Q. Kind to you?

25 A. Yes.

1 Q. And what you told us here is your recollection of your
2 contact with the officer that treated you the nicest and with
3 the most dignity and respect, correct?

4 A. Correct.

5 MR. BOYLE: I have nothing further.

6 MR. WALL: Nothing else.

7 THE COURT: Thank you, Ms. Kneuppel. You may step
8 down.

9 (Witness excused at 4:18 p.m.)

10 MR. WALL: Call Officer Shull for two, three minutes.

11 THE CLERK: Please raise your right hand.

12 BRIAN SHULL, GOVERNMENT REBUTTAL WITNESS, DULY SWORN

13 THE CLERK: Thank you. Please be seated.

14 DIRECT EXAMINATION

15 BY MR. WALL:

16 Q. Officer, after you asked Ms. Kneuppel, "Do you know where
17 Tyrone's Air Jordan flip flops are that he wants?", did she
18 indicate that she knew where they were?

19 MR. BOYLE: Well, Judge, I'm going to object as, first
20 of all, leading question. Well, maybe not, but --

21 MR. WALL: It's impeachment.

22 MR. BOYLE: I believe that he's already testified to
23 this on direct when he was originally called. In other words, I
24 don't know think this is proper rebuttal.

25 THE COURT: Mr. Wall, would you please get to the

1 rebuttal question?

2 MR. WALL: Okay.

3 BY MR. WALL:

4 Q. When you went into the house with Ashley to get the flip
5 flops, were you in front of her leading the way or was she in
6 front of you leading the way?

7 A. I think we started off side to side and then I let her lead
8 the way.

9 MR. WALL: Okay. Nothing else.

10 MR. BOYLE: I have nothing further because I think
11 that's what he said on original testimony. So I have nothing
12 further.

13 THE COURT: Thank you, Officer Shull. You may step
14 down.

15 (Witness excused at 4:20 p.m.)

16 MR. WALL: I think that's it, Your Honor.

17 THE COURT: Ms. Boyle, do you have any other
18 witnesses?

19 MR. BOYLE: No.

20 MR. WALL: If I can just make a -- not an evidentiary
21 proffer, but I've been trying to hit a moving target here. We
22 had initial briefing by Ms. Boyle on October 21st, where the
23 issues were framed in her consolidated motion. I responded on
24 October 31st. And then she filed a reply, and I think in the
25 reply she raised a couple other issues which yesterday we agreed

1 to frame for the Court, and they're in yesterday's submission.

2 There may be two other issues in front of the Court,
3 one might be relevant and one is not. And I'm maybe
4 extrapolating a bit from Ms. Boyle's questions. One is -- has
5 to do when Todd Carter provided his information to the Milwaukee
6 Police Department. And I don't know that that's relevant.

7 THE COURT: Is that the staleness issue?

8 MR. WALL: Well, that would be the second issue. The
9 first issue is when he provided it and whether or not they
10 should have acted on it earlier or not. That I don't think is
11 relevant.

12 I think what would be relevant is the fact that four
13 years past, almost four years, from the date of the homicide
14 until the date of the search. And, you know, that certainly
15 could be relevant and say, well, evidence is stale and guns are
16 not kept in a house after four years and DNA disappears, cash
17 disappears, recording equipment might disappear. I think those
18 are all relevant arguments.

19 But it seems that issue has been raised and I was not
20 prepared to respond to that. I would need to -- if that's an
21 issue, that the search warrant is stale -- first of all, there's
22 no statute of limitations on homicide, we know that. Whether
23 it's a cold case from 20 years ago or three and a half years
24 ago, there's no statute of limitations.

25 So, what they're looking for here, I guess there's a

1 question of staleness. And, again, I was not prepared for that
2 issue to be argued in order to, let's say, put in testimony that
3 DNA can remain on clothes. Well, actually I don't think I need
4 that testimony. I think we know that DNA evidence can last 20,
5 30 years because they're solving those type of crimes 20 or 30
6 years later.

7 But maybe, Ms. Boyle, if there's a new issue, maybe
8 Ms. Boyle can frame it and maybe we can, I don't know, just deal
9 with it.

10 THE COURT: Ms. Boyle?

11 MR. BOYLE: Well, I think -- I mean, there potentially
12 is a new issue. But I think it really comes down to what
13 portions of the affidavit are, quote-unquote, valid. Because we
14 know that the protective sweep, that being the AK-47, is out by
15 agreement of the parties. So the question then becomes is the
16 issue on the two other gun cases, the consent of going in the
17 home -- and, again, as I stated I believe in my reply brief, I
18 didn't know that the government was going to take the position
19 that the protective sweep was bad which is why I thought it was
20 going to be a different framed issue.

21 So, if the gun cases in the bedroom remain in the
22 affidavit, I do not believe under any circumstance that I can
23 argue that that is not enough probable cause to go in the house.
24 I mean, at least that's what I'm thinking what the case law is
25 going to tell me.

1 If the gun cases in the bedroom are not allowed to
2 remain in the affidavit and are stricken depending on how the
3 Court rules, then the question becomes is whether or not there's
4 enough information in the remaining portion of the search
5 warrant to support the search warrant --

6 THE COURT: In the remaining affidavit.

7 MR. BOYLE: In the remaining affidavit. The search
8 warrant being I guess, quote-unquote, valid for lack of a better
9 word right now. Which obviously now deals with that whole
10 staleness issue.

11 I don't think the staleness issue comes into play
12 right now because there's enough with the gun cases on the face
13 of the affidavit. But if the gun cases go away, then I have
14 this entire argument about going in and, you know, there's a
15 minimal statement from Todd Carter that's not dated, there's no
16 idea of when that statement was given to law enforcement,
17 looking for evidence of DNA, money, contraband, in a residence
18 that there's no connection whatsoever in the affidavit to
19 suggest that it had anything to do with the homicide.

20 So I think the issue of staleness becomes relevant
21 depending on whether or not the two gun cases in the bedroom
22 stay or go.

23 THE COURT: Okay. Let's set a briefing schedule. As
24 I understand the issues from the parties, the first question is
25 whether or not the first observation was valid; that is, was

1 there legal authority to enter the bedroom and make those
2 observations. So the parties agree that they will address that
3 issue.

4 And then the second issue is, if that observation was
5 not valid, whether the remainder of the affidavit supports
6 probable cause to issue a warrant. And I understand then that's
7 where the possible issue of staleness may come up.

8 Is that a correct statement of the issues, Mr. Wall
9 and Ms. Boyle?

10 MR. WALL: Yes, Your Honor.

11 MR. BOYLE: Yes, Your Honor. And I will indicate
12 this. If -- and I don't know the briefing schedule that the
13 Court is going to issue. I will make a very quick determination
14 that my assumption regarding the mere observation of the two gun
15 cases would be enough to support the affidavit.

16 In other words, I just want a day or maybe a couple
17 days to inform the Court if I'm changing my position that
18 there's enough to get an affidavit and search warrant based upon
19 the observation of the two gun cases alone.

20 I've been in this building all day long. It's been a
21 very --

22 In other words, because I had stated before, that if
23 the court rules that the two gun cases are validly -- were
24 lawfully observed in the residence, then there's no issue on the
25 staleness and the dual -- because that's enough probable cause

1 right there. I just want to ensure that I'm correct that that's
2 how the case law is going to read, that the mere presence of the
3 observation of gun cases, if a person is lawfully in the
4 residence, is enough to get an affidavit. That's all I'm
5 saying. Does that make sense?

6 MR. WALL: It just goes to the measure of probable
7 cause, but maybe there is some case law on it. It's really a
8 probable cause issue that is --

9 MR. BOYLE: Right.

10 MR. WALL: Yeah.

11 MS. BOYLE: I think it's enough probable cause to get
12 an affidavit. Which I'm stating for the record that I think the
13 case law is going to state that if an officer sees -- if they're
14 lawfully in the residence and they see a gun case, that that's
15 enough probable cause to get, especially when they have
16 knowledge that the person's a felon. I believe that's what the
17 case law is going to support. Which, obviously, if I am correct
18 that that's what the case law is going to support, you have
19 properly identified the issues. If I learn, though, in the next
20 couple days that I am incorrect, I will immediately notify the
21 Court that there might be another issue to address other than
22 the two that you've identified.

23 MR. WALL: That's fine.

24 MR. BOYLE: Okay.

25 THE COURT: And there's also outstanding the issue

1 that the parties have already briefed upon, that is, the issue
2 of the legal effect of the officer correcting the address not
3 under oath.

4 MR. WALL: Right.

5 THE COURT: And that has already been briefed.

6 Now, as far as the briefing schedule, Ms. Boyle, do
7 you want to wait for a transcript or not?

8 MR. BOYLE: Oh, I think I have to wait for a
9 transcript. Do you have an opinion about that, Mr. Wall?

10 MR. WALL: Well, I think -- yeah, I think you need a
11 transcript.

12 MR. BOYLE: Yeah, I think we need a transcript in this
13 one.

14 THE COURT: Mr. Schindhelm, when do you anticipate a
15 transcript being ready?

16 THE REPORTER: Whichever service option counsel wants
17 is acceptable.

18 THE COURT: And what the court reporter means by that,
19 Ms. Boyle, whether or not you want an expedited, 14-day
20 transcript, which is more expensive, or whether you want the
21 usual course which is approximately 30 days?

22 MR. BOYLE: We can go ahead and expedite it.

23 Expedited, my client would request.

24 THE COURT: With that, Mr. Schindhelm, when do you
25 think the transcript would be ready?

1 THE REPORTER: 7 or 14 days from today, whichever
2 service counsel requests.

3 MS. BOYLE: Hold on for a second.

4 (Ms. Boyle and Defendant confer off the record.)

5 MS. BOYLE: My client has indicated he'll take the
6 7-day option.

7 THE COURT: So the transcript will be ready a week
8 from today which will be December 6. And, Ms. Boyle, can you
9 have your brief in Monday, December 12th?

10 MR. BOYLE: Sure.

11 THE COURT: And, Mr. Wall, is that 10 days or 14 days
12 for your response?

13 MR. WALL: 10 days will be fine, Your Honor.

14 THE COURT: So that will be December 22nd.

15 And, Ms. Boyle, we have a -- holiday, Christmas
16 Holiday in-between here, so can you get your reply in by
17 December 29th?

18 MR. BOYLE: Yes.

19 THE COURT: So the briefing schedule will be as
20 follows: The defense to file their brief by December 12th;
21 response by December 22nd; and any replies by December 29th.

22 Is there anything else we need to take up this
23 afternoon, Mr. Wall?

24 MR. WALL: No, Your Honor.

25 THE COURT: Ms. Boyle?

1 MR. BOYLE: No, Your Honor.

2 THE COURT: Okay. I thank you both and wish you,
3 Mr. McMillian, a good afternoon.

4 MS. BOYLE: Thank you, Judge.

5 (Proceedings concluded at 4:34 p.m.)

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